

CHAPTER 139.

[Reengrossed House Bill No. 946.]

POLLUTION CONTROL—TAX CREDITS—RESTORATION OF RESOURCES—PENALTIES.

AN ACT relating to air and water pollution control; providing certain tax credits and exemptions for air and water pollution control facilities; providing certain damages for injury to or for destruction or reduction in quality of the state's natural resources; defining crimes and prescribing penalties; and adding new sections to chapter 216, Laws of 1945 and to chapter 90.48 RCW; authorizing the levying of money penalties by the water pollution control commission; and providing for recovery of moneys for damages to resources of the state.

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

Pollution control—Tax credits—Definitions.

Section 1. Unless a different meaning is plainly required by the context, the following words as hereinafter used in this act shall have the following meanings:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined: (a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle. (b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste which if released to

a water course could cause water pollution: *Provided*, That the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed for a municipal corporation or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities.

(2) "Industrial waste" shall mean any liquid, gaseous, radioactive or solid waste substance or combinations thereof resulting from any process of industry, manufacture, trade or business, or from the development or recovery of any natural resources.

(3) "Treatment works" or "control device" shall mean any machinery, equipment, structure or property which is installed, constructed or acquired for the primary purpose of controlling air or water pollution and shall include, but shall not be limited to such devices as precipitators, scrubbers, towers, filters, baghouses, incinerators, evaporators, reservoirs, aerators used for the purpose of treating, stabilizing, incinerating, holding, removing or isolating sewage and industrial wastes.

(4) "Disposal system" shall mean any system containing treatment works or control devices and includes but is not limited to pipelines, outfalls, conduits, pumping stations, force mains, solids handling equipment, instrumentation and monitoring equipment, ducts, fans, vents, hoods and conveyors and all other construction, devices, appurtenances and facilities used for collecting or conducting, sewage and industrial waste to a point of disposal, treatment or isolation except that which is necessary to manufacture of products.

(5) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been made not later than December 31,

Pollution control—Tax credits—Definitions.

1969: *Provided*, That with respect solely to a facility required to be installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of the effective date of this act, such application will be deemed timely made if made within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency.

(6) "Appropriate control agency" shall mean the state water pollution control commission; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located, or the state air pollution control board, where the facility is not or will not be located within the area of an operating local or regional air pollution control agency, or where the state air pollution control board has assumed jurisdiction.

(7) "Commission" shall mean the state tax commission.

Application for tax credit certificate—Filing—Contents.

Sec. 2. An application for a certificate shall be filed with the commission in such manner and in such form as may be prescribed by the commission. The application shall contain estimated or actual costs, plans and specifications of the facility including all materials incorporated or to be incorporated therein and a list describing, and showing the cost, of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the operating procedure for the facility, or a time schedule for the acquisition and installation or attachment of the facility and the proposed operating procedure for such facility.

Certificate—Issuance.

Sec. 3. A certificate shall be issued by the commission within thirty days after approval of the application by the appropriate control agency. Such approval shall be given when it is determined that

the facility is designed and is operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air or for the control and reduction of water pollution and that the facility is suitable, reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, as the case may be, and it shall notify the commission of its findings within thirty days of the date on which the application was submitted to it for approval. In making such determination, the appropriate control agency shall afford to the applicant an opportunity for a hearing: *Provided*, That if the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local or regional air pollution control agency, such applicant may appeal to the state air pollution control board pursuant to rules and regulations established by that board.

Sec. 4. The commission may adopt such rules and regulations as it deems necessary for the administration of this act subject to the provisions of RCW 34.04.020 through 34.04.060. Such rules and regulations shall not abridge the authority of the appropriate control agency as provided in this act or any other law.

Rules and regulations.

Sec. 5. (1) The original acquisition of a facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax imposed by chapter 82.12 RCW when the due date for payment of such taxes is subsequent to the effective date of the certificate: *Provided*, That the exemption of this section shall not apply to servicing, maintenance, repairs, and replacements of parts after a facility is complete and placed in operation.

Sales tax exemption—  
Alternative tax credit.

(2) Subsequent to the effective date of this act the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the ex-

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emption for the facility covered by such certificate against any future taxes to be paid pursuant to chapters 82.04, 82.12 and 82.16 RCW: *Provided*, That on and after the effective date of this act if such person elects to take a tax credit for a facility under this subsection he may not take further credit under RCW 82.04.435.

Application  
for determi-  
nation of cost  
—Credit.

Sec. 6. (1) On and after the effective date of this act, an application for a determination of the cost of an existing or newly completed pollution control facility may be filed with the commission in such manner and in such form as may be prescribed by the commission. The application shall contain the final cost figures for the installation of the facility and reasonable supporting documents and other proof as required by the state tax commission. In the event such facility is not already covered by a certificate issued for the purpose of authorizing the tax exemption or credit provided for in this act, the commission shall seek the approval of the facility from the appropriate control agency. The commission shall determine the final cost of the pollution control facility and issue a supplement to the existing certificate or an original certificate stating the cost of the pollution control facility: *Provided*, That the cost of an existing pollution control facility shall be the depreciated value thereof at the time of application filed pursuant to this section.

(2) When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a credit may be claimed against taxes imposed pursuant to chapters 82.04, 82.12 and 82.16 RCW. The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

(a) No credit exceeding fifty percent of the taxes payable under chapters 82.04, 82.12 and 82.16 RCW shall be allowed in any reporting period;

(b) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized: *Provided*, That for the purposes of this act the determination of "net commercial value" shall not include a deduction for the cost or depreciation of the facility.

(c) The total cumulative amount of such credits allowed for any facility covered by a certificate shall not exceed fifty percent of the cost of such facility.

(d) The total cumulative amount of credits against state taxes authorized by this act shall be reduced by the total amount of any federal investment credit or other federal tax credit actually received by the certificate holder applicable to the facility. This reduction shall be made as an offset against the credit claimed in the first reporting period following the allowance of such investment credit, and thereafter as an offset against any credit balance as it shall become available to the certificate holder.

(3) Applicants and certificate holders shall provide the commission with information showing the net commercial value of materials captured or recovered by a facility and shall make all pertinent books and records available for examination by the commission for the purposes of determining the credit provided by this act.

Sec. 7. Nothing in this act shall be deemed to affect the application of credits pursuant to RCW 82.04.435 accumulated prior to the effective date of this act.

Application—  
Prior credits.

Pollution control—Tax credits—Modification or replacement of facility.

Sec. 8. If subsequent to the issuance of a certificate or supplement for a facility, a determination is made to modify or replace such facility, the holder thereof may file an application for a new certificate or supplement covering such modified or replacement facility in accordance with the procedures set forth in this act for original certificates and supplements thereto. After the issuance by the commission of any new certificate or supplement, all subsequent tax exemptions and credits for the modified or replacement facility shall be based thereon.

Certificate or notice of denial—Mailing.

Sec. 9. The commission shall send a certificate or supplement when issued, by certified mail to the applicant. Notice of the commission's refusal to issue a certificate or supplement shall likewise be sent to the applicant by certified mail.

Revision of local findings by state control commission—When.

Sec. 10. The water pollution control commission or the state air pollution control board, after notice to the commission and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

(1) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the commission shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this act or against which the credit

provided for by this act has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

(2) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the commission modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified.

Sec. 11. Any aggrieved person may appeal to the superior court in the county in which the facility is located. Such appeal from the commission, the water pollution control commission or the state air pollution control board shall be governed by the terms of chapter 34.04 RCW. Appeal.

Sec. 12. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. Severability.

Sec. 13. There is added to chapter 216, Laws of 1945 and to chapter 90.48 RCW a new section to read as follows: New section



Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the commission or the director made pursuant to the provisions of this chapter, including the conditions of a waste discharge permit issued pursuant to RCW 90.48.160, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the state's waters below the standards set by the commission, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake or other water source to its condition prior to the injury, as such condition is determined by the commission. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: *Provided*, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to either the state game fund for the department of fisheries to use for food fish or shellfish management purposes and propagation, or to any other agency of the state having jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate: *Provided*, That the agency receiving such money shall utilize not less than one-half of said money on activities or projects within the county where the action was brought by the attorney general. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.

Sec. 14. There is added to chapter 216, Laws of 1945 and to chapter 90.48 RCW a new section to read as follows:

Every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.160, or

(2) Conducts a commercial or industrial operation without a waste discharge permit as required by RCW 90.48.160, or

(3) Violates the provisions of RCW 90.48.080, shall incur, in addition to any other penalty as provided by law, a penalty in the amount of one hundred dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the director of the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The director may, upon written application therefor, received within fifteen days, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as he in his discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. If the amount of such penalty is not paid to the commission within fifteen

New section.

Violations—  
Penalties.

days after receipt of notice imposing the same, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of such application, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

Passed the House April 28, 1967.

Passed the Senate April 28, 1967.

Approved by the Governor May 11, 1967.

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CHAPTER 140.

[Engrossed House Bill No. 978.]

STATE PROPERTY TAX—DISTRIBUTION TO SCHOOL DISTRICTS.

AN ACT relating to education; amending section 2, chapter 154, Laws of 1965 extraordinary session as amended by section 1, chapter 171, Laws of 1965 extraordinary session and RCW 28.41.130; creating new sections; adding a new section to chapter 28.48 RCW; and declaring an emergency and providing an effective date.

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

New section.

Section 1. There is added to chapter 28.48 RCW a new section to read as follows:

Property tax  
—Support of  
public schools  
—Distribution.

In each calendar year in which the state shall collect a property tax for the support of common schools, the superintendent of public instruction shall distribute the proceeds of such tax to each