

**TWENTY SEVENTH DAY**

House Chamber, Olympia, Saturday, April 10, 2010

The House was called to order at 2:00 p.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 Katy Payne and Samantha Payne. The Speaker (Representative Morris presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Judy Warnick, 13th District.

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

There being no objection, the House advanced to the sixth order of business.

**SECOND READING**

**SENATE JOINT RESOLUTION NO. 8225, by Senators Fraser, Brandland and Prentice**

**Resolving to define "interest" in the state Constitution.**

The bill was read the second time.

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

Representatives Ormsby and Warnick spoke in favor of the passage of the joint resolution.

Representative Ericksen spoke against the passage of the joint resolution.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Senate Joint Resolution No. 8225.

**MOTIONS**

On motion of Representative Santos, Representative Wood was excused. On motion of Representative Hinkle, Representative Shea was excused.

**ROLL CALL**

The Clerk called the roll on the final passage of Senate Joint Resolution No. 8225, and the joint resolution passed the House by the following vote: Yeas, 69; Nays, 27; Absent, 0; Excused, 2.

Voting yea: Representatives Anderson, Appleton, Armstrong, Blake, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Liias, Linville, Maxwell, McCoy, Miloscia,

Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Warnick, White, Williams and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Bailey, Campbell, Crouse, Dammeier, DeBolt, Ericksen, Fagan, Haler, Herrera, Hope, Johnson, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Roach, Ross, Schmick, Short, Taylor and Walsh.

Excused: Representatives Shea and Wood.

SENATE JOINT RESOLUTION NO. 8225, having received the necessary constitutional majority, was declared passed.

**STATEMENT FOR THE JOURNAL**

I intended to vote NAY on Senate Joint Resolution No. 8225.

Matthew Shea, 4th District

**SECOND READING**

**HOUSE BILL NO. 1690, by Representatives Hasegawa, Hunt, Hudgins, Anderson and Kenney**

**Authorizing alternative public works contracting procedures.**

The bill was read the second time.

Representative Dammeier moved the adoption of amendment (1739).

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The establishment of alternative public works contracting procedures authorized for use by public bodies has been a complex, controversial, and challenging undertaking, but it has been successful. The key to the successful adoption and consideration of these procedures has depended, in great part, on the review and oversight mechanisms put in place by the legislature in chapter 39.10 RCW, as well as the countless hours of dedicated work by numerous stakeholders over many years. It is the intent of the legislature to clarify that, unless otherwise specifically provided for in law, public bodies that want to use an alternative public works contracting procedure may use only those procedures specifically authorized in chapter 39.10 RCW.

**Sec. 2.** RCW 39.10.200 and 2007 c 494 s 1 are each amended to read as follows:

The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use

of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. It is the intent of the legislature to establish that, unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in this chapter, subject to the requirements of this chapter.

**Sec. 3.** RCW 39.10.230 and 2009 c 75 s 1 are each amended to read as follows:

The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) ~~(Develop guidelines to be used by the committee for the review and approval of design build demonstration projects that procure operations and maintenance services)~~ Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;

(4) Appoint members of the committee; and

(5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

**Sec. 4.** RCW 43.131.408 and 2007 c 494 s 507 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2014:

(1) RCW 39.10.200 and section 2 of this act, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2007 c 494 s 101 & 2005 c 469 s 3;

(3) RCW 39.10.220 and 2007 c 494 s 102 & 2005 c 377 s 1;

(4) RCW 39.10.230 and section 3 of this act, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2007 c 494 s 104;

(6) RCW 39.10.250 and 2007 c 494 s 105;

(7) RCW 39.10.260 and 2007 c 494 s 106;

(8) RCW 39.10.270 and 2007 c 494 s 107;

(9) RCW 39.10.280 and 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2007 c 494 s 201, 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328 s 2;

(12) ~~(RCW 39.10.310 and 2007 c 494 s 202 & 1994 c 132 s 8;~~

~~(13))~~ RCW 39.10.320 and 2007 c 494 s 203 & 1994 c 132 s 7;

~~((14))~~ (13) RCW 39.10.330 and 2007 c 494 s 204;

~~((15))~~ (14) RCW 39.10.340 and 2007 c 494 s 301, 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328 s 3;

~~((16))~~ (15) RCW 39.10.350 and 2007 c 494 s 302;

~~((17))~~ (16) RCW 39.10.360 and 2007 c 494 s 303;

~~((18))~~ (17) RCW 39.10.370 and 2007 c 494 s 304;

~~((19))~~ (18) RCW 39.10.380 and 2007 c 494 s 305;

~~((20))~~ (19) RCW 39.10.390 and 2007 c 494 s 306;

~~((21))~~ (20) RCW 39.10.400 and 2007 c 494 s 307;

~~((22))~~ (21) RCW 39.10.410 and 2007 c 494 s 308;

~~((23))~~ (22) RCW 39.10.420 and 2007 c 494 s 401 & 2003 c 301 s 1;

~~((24))~~ (23) RCW 39.10.430 and 2007 c 494 s 402;

~~((25))~~ (24) RCW 39.10.440 and 2007 c 494 s 403;

~~((26))~~ (25) RCW 39.10.450 and 2007 c 494 s 404;

~~((27))~~ (26) RCW 39.10.460 and 2007 c 494 s 405;

~~((28))~~ (27) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;

~~((29))~~ (28) RCW 39.10.480 and 1994 c 132 s 9;

~~((30))~~ (29) RCW 39.10.490 and 2007 c 494 s 501 & 2001 c 328 s 5;

~~((31))~~ (30) RCW 39.10.500 and 2007 c 494 s 502;

~~((32))~~ (31) RCW 39.10.510 and 2007 c 494 s 503;

~~((33))~~ (32) RCW 39.10.900 and 1994 c 132 s 13;

~~((34))~~ (33) RCW 39.10.901 and 1994 c 132 s 14; and

~~((35))~~ (34) RCW 39.10.903 and 2007 c 494 s 510."

Correct the title.

Representatives Dammeier and Hasegawa spoke in favor of the adoption of the amendment.

Amendment (1739) 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 Dammeier and Hasegawa 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 House Bill No. 1690.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 1690, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, 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, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams and Mr. Speaker.

Excused: Representatives Shea and Wood.

ENGROSSED HOUSE BILL NO. 1690, having received the necessary constitutional majority, was declared passed.

#### STATEMENT FOR THE JOURNAL

I intended to vote YEA on Engrossed House Bill No. 1690.

Matthew Shea, 4th District

#### MESSAGE FROM THE SENATE

April 10, 2010

Mr. Speaker:

The Senate receded from its amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2956, and under suspension of the rules returned ENGROSSED SECOND

SUBSTITUTE HOUSE BILL NO. 2956 to second reading for the purpose of amendment. The Senate further adopted amendment 2956-S2.E and passed the measure as amended.

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1. PURPOSE, FINDINGS, AND INTENT.** (1) The purpose of this chapter is to provide for a safety net assessment on certain Washington hospitals, which will be used solely to augment funding from all other sources and thereby obtain additional funds to restore recent reductions and to support additional payments to hospitals for medicaid services.

(2) The legislature finds that:

(a) Washington hospitals, working with the department of social and health services, have proposed a hospital safety net assessment to generate additional state and federal funding for the medicaid program, which will be used to partially restore recent inpatient and outpatient reductions in hospital reimbursement rates and provide for an increase in hospital payments; and

(b) The hospital safety net assessment and hospital safety net assessment fund created in this chapter allows the state to generate additional federal financial participation for the medicaid program and provides for increased reimbursement to hospitals.

(3) In adopting this chapter, it is the intent of the legislature:

(a) To impose a hospital safety net assessment to be used solely for the purposes specified in this chapter;

(b) That funds generated by the assessment shall be used solely to augment all other funding sources and not as a substitute for any other funds;

(c) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the reimbursement rates and other payments authorized by this chapter; and

(d) To condition the assessment on receiving federal approval for receipt of additional federal financial participation and on continuation of other funding sufficient to maintain hospital inpatient and outpatient reimbursement rates and small rural disproportionate share payments at least at the levels in effect on July 1, 2009.

**"NEW SECTION. Sec. 2. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certified public expenditure hospital" means a hospital participating in the department's certified public expenditure payment program as described in WAC 388-550-4650 or successor rule.

(2) "Critical access hospital" means a hospital as described in RCW 74.09.5225.

(3) "Department" means the department of social and health services.

(4) "Fund" means the hospital safety net assessment fund established under section 3 of this act.

(5) "Hospital" means a facility licensed under chapter 70.41 RCW.

(6) "Long-term acute care hospital" means a hospital which has an average inpatient length of stay of greater than twenty-five days as determined by the department of health.

(7) "Managed care organization" means an organization having a certificate of authority or certificate of registration from the office of the insurance commissioner that contracts with the department under a comprehensive risk contract to provide prepaid health care services to eligible clients under the department's medicaid managed care programs, including the healthy options program.

(8) "Medicaid" means the medical assistance program as established in Title XIX of the social security act and as administered in the state of Washington by the department of social and health services.

(9) "Medicare cost report" means the medicare cost report, form 2552-96, or successor document.

(10) "Nonmedicare hospital inpatient day" means total hospital inpatient days less medicare inpatient days, including medicare days reported for medicare managed care plans, as reported on the medicare cost report, form 2552-96, or successor forms, excluding all skilled and nonskilled nursing facility days, skilled and nonskilled swing bed days, nursery days, observation bed days, hospice days, home health agency days, and other days not typically associated with an acute care inpatient hospital stay.

(11) "Prospective payment system hospital" means a hospital reimbursed for inpatient and outpatient services provided to medicaid beneficiaries under the inpatient prospective payment system and the outpatient prospective payment system as defined in WAC 388-550-1050. For purposes of this chapter, prospective payment system hospital does not include a hospital participating in the certified public expenditure program or a bordering city hospital located outside of the state of Washington and in one of the bordering cities listed in WAC 388-501-0175 or successor regulation.

(12) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

(13) "Regional support network" has the same meaning as provided in RCW 71.24.025.

(14) "Rehabilitation hospital" means a medicare-certified freestanding inpatient rehabilitation facility.

(15) "Secretary" means the secretary of the department of social and health services.

(16) "Small rural disproportionate share hospital payment" means a payment made in accordance with WAC 388-550-5200 or subsequently filed regulation.

**"NEW SECTION. Sec. 3. HOSPITAL SAFETY NET ASSESSMENT FUND.** (1) A dedicated fund is hereby established within the state treasury to be known as the hospital safety net assessment fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the department on audit or otherwise shall be returned to the fund.

(a) Any unexpended balance in the fund at the end of a fiscal biennium shall carry over into the following biennium and shall be applied to reduce the amount of the assessment under section 6(1)(c) of this act.

(b) Any amounts remaining in the fund on July 1, 2013, shall be used to make increased payments in accordance with sections 10 and 13 of this act for any outstanding claims with dates of service prior to July 1, 2013. Any amounts remaining in the fund after such increased payments are made shall be refunded to hospitals, pro rata according to the amount paid by the hospital, subject to the limitations of federal law.

(2) All assessments, interest, and penalties collected by the department under sections 4 and 6 of this act shall be deposited into the fund.

(3) Disbursements from the fund may be made only as follows:

(a) Subject to appropriations and the continued availability of other funds in an amount sufficient to maintain the level of medicaid hospital rates in effect on July 1, 2009;

(b) Upon certification by the secretary that the conditions set forth in section 17(1) of this act have been met with respect to the assessments imposed under section 4 (1) and (2) of this act, the payments provided under section 9 of this act, payments provided under section 13(2) of this act, and any initial payments under sections 11 and 12 of this act, funds shall be disbursed in the amount necessary to make the payments specified in those sections;

(c) Upon certification by the secretary that the conditions set forth in section 17(1) of this act have been met with respect to the assessments imposed under section 4(3) of this act and the payments provided under sections 10 and 14 of this act, payments made subsequent to the initial payments under sections 11 and 12 of this act, and payments under section 13(3) of this act, funds shall be disbursed periodically as necessary to make the payments as specified in those sections;

(d) To refund erroneous or excessive payments made by hospitals pursuant to this chapter;

(e) The sum of forty-nine million three-hundred thousand dollars per biennium may be expended in lieu of state general fund payments to hospitals. An additional sum of seventeen million five-hundred thousand dollars for the 2009-2011 fiscal biennium may be expended in lieu of state general fund payments to hospitals if additional federal financial participation under section 5001 of P.L. No. 111-5 is extended beyond December 31, 2010;

(f) The sum of one million dollars per biennium may be disbursed for payment of administrative expenses incurred by the department in performing the activities authorized by this chapter;

(g) To repay the federal government for any excess payments made to hospitals from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations and all appeals have been exhausted. In such a case, the department may require hospitals receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a hospital is unable to refund payments, the state shall develop a payment plan and/or deduct moneys from future medicare payments.

**NEW SECTION. Sec. 4. ASSESSMENTS.** (1) An assessment is imposed as set forth in this subsection effective after the date when the applicable conditions under section 17(1) of this act have been satisfied through June 30, 2013, for the purpose of funding restoration of reimbursement rates under sections 9(1) and 13(2)(a) of this act and funding payments made subsequent to the initial payments under sections 11 and 12 of this act. Payments under this subsection are due and payable on the first day of each calendar quarter after the department sends notice of assessment to affected hospitals. However, the initial assessment is not due and payable less than thirty calendar days after notice of the amount due has been provided to affected hospitals.

(a) For the period beginning on the date the applicable conditions under section 17(1) of this act are met through December 31, 2010:

(i) Each prospective payment system hospital shall pay an assessment of thirty-two dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(ii) Each critical access hospital shall pay an assessment of ten dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(b) For the period beginning on January 1, 2011 and ending on June 30, 2011:

(i) Each prospective payment system hospital shall pay an assessment of forty dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(ii) Each critical access hospital shall pay an assessment of ten dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(c) For the period beginning July 1, 2011, through June 30, 2013:

(i) Each prospective payment system hospital shall pay an assessment of forty-four dollars for each annual nonmedicare hospital

inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(ii) Each critical access hospital shall pay an assessment of ten dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(d)(i) For purposes of (a) and (b) of this subsection, the department shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare inpatient days for each hospital that is not exempt from the assessment as described in section 5 of this act for the relevant state fiscal year 2008 portions included in the hospital's fiscal year end reports 2007 and/or 2008 cost reports. The department shall use nonmedicare hospital inpatient day data for each hospital taken from the centers for medicare and medicaid services' hospital 2552-96 cost report data file as of November 30, 2009, or equivalent data collected by the department.

(ii) For purposes of (c) of this subsection, the department shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under section 5 of this act, taken from the most recent publicly available hospital 2552-96 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the department. If cost report data are unavailable from the foregoing source for any hospital subject to the assessment, the department shall collect such information directly from the hospital.

(2) An assessment is imposed in the amounts set forth in this section for the purpose of funding the restoration of the rates under sections 9(2) and 13(2)(b) of this act and funding the initial payments under sections 11 and 12 of this act, which shall be due and payable within thirty calendar days after the department has transmitted a notice of assessment to hospitals. Such notice shall be transmitted immediately upon determination by the secretary that the applicable conditions established by section 17(1) of this act have been met.

(a) Prospective payment system hospitals.

(i) Each prospective payment system hospital shall pay an assessment of thirty dollars for each annual nonmedicare hospital inpatient day up to sixty thousand per year, multiplied by a ratio, the numerator of which is the number of days between June 30, 2009, and the day after the applicable conditions established by section 17(1) of this act have been met and the denominator of which is three hundred sixty-five.

(ii) Each prospective payment system hospital shall pay an assessment of one dollar for each annual nonmedicare hospital inpatient day over and above sixty thousand per year, multiplied by a ratio, the numerator of which is the number of days between June 30, 2009, and the day after the applicable conditions established by section 17(1) of this act have been met and the denominator of which is three hundred sixty-five.

(b) Each critical access hospital shall pay an assessment of ten dollars for each annual nonmedicare hospital inpatient day, multiplied by a ratio, the numerator of which is the number of days between June 30, 2009, and the day after the applicable conditions established by section 17(1) of this act have been met and the denominator of which is three hundred sixty-five.

(c) For purposes of this subsection, the department shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare inpatient days for each hospital that is not exempt from the assessment as described in section 5 of this act for the relevant state fiscal year 2008 portions included in the hospital's fiscal year end reports 2007 and/or 2008 cost reports. The department shall use nonmedicare hospital inpatient day data for each hospital taken from the centers for medicare and

medicaid services' hospital 2552-96 cost report data file as of November 30, 2009, or equivalent data collected by the department.

(3) An assessment is imposed as set forth in this subsection for the period February 1, 2010, through June 30, 2013, for the purpose of funding increased hospital payments under sections 10 and 13(3) of this act, which shall be due and payable on the first day of each calendar quarter after the department has sent notice of the assessment to each affected hospital, provided that the initial assessment shall be transmitted only after the secretary has determined that the applicable conditions established by section 17(1) of this act have been satisfied and shall be payable no less than thirty calendar days after the department sends notice of the amount due to affected hospitals. The initial assessment shall include the full amount due from February 1, 2010, through the date of the notice.

(a) For the period February 1, 2010, through December 31, 2010:

(i) Prospective payment system hospitals.

(A) Each prospective payment system hospital shall pay an assessment of one hundred nineteen dollars for each annual nonmedicare hospital inpatient day up to sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(B) Each prospective payment system hospital shall pay an assessment of five dollars for each annual nonmedicare hospital inpatient day over and above sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(ii) Each psychiatric hospital and each rehabilitation hospital shall pay an assessment of thirty-one dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(b) For the period beginning on January 1, 2011 and ending on June 30, 2011:

(i) Prospective payment system hospitals.

(A) Each prospective payment system hospital shall pay an assessment of one hundred fifty dollars for each annual nonmedicare inpatient day up to sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(B) Each prospective payment system hospital shall pay an assessment of six dollars for each annual nonmedicare inpatient day over and above sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five. The department may adjust the assessment or the number of nonmedicare hospital inpatient days used to calculate the assessment amount if necessary to maintain compliance with federal statutes and regulations related to medicaid program health care-related taxes.

(ii) Each psychiatric hospital and each rehabilitation hospital shall pay an assessment of thirty-nine dollars for each annual nonmedicare hospital inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(c) For the period beginning July 1, 2011, through June 30, 2013:

(i) Prospective payment system hospitals.

(A) Each prospective payment system hospital shall pay an assessment of one hundred fifty-six dollars for each annual nonmedicare hospital inpatient day up to sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(B) Each prospective payment system hospital shall pay an assessment of six dollars for each annual nonmedicare inpatient day over and above sixty thousand per year, multiplied by the number of days in the assessment period divided by three hundred sixty-five. The department may adjust the assessment or the number of nonmedicare hospital inpatient days if necessary to maintain compliance with federal statutes and regulations related to medicaid program health care-related taxes.

(ii) Each psychiatric hospital and each rehabilitation hospital shall pay an assessment of thirty-nine dollars for each annual nonmedicare

inpatient day, multiplied by the number of days in the assessment period divided by three hundred sixty-five.

(d)(i) For purposes of (a) and (b) of this subsection, the department shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare inpatient days for each hospital that is not exempt from the assessment as described in section 5 of this act for the relevant state fiscal year 2008 portions included in the hospital's fiscal year end reports 2007 and/or 2008 cost reports. The department shall use nonmedicare hospital inpatient day data for each hospital taken from the centers for medicare and medicaid services' hospital 2552-96 cost report data file as of November 30, 2009, or equivalent data collected by the department.

(ii) For purposes of (c) of this subsection, the department shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under section 5 of this act, taken from the most recent publicly available hospital 2552-96 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the department. If cost report data are unavailable from the foregoing source for any hospital subject to the assessment, the department shall collect such information directly from the hospital.

(4) Notwithstanding the provisions of section 8 of this act, nothing in this act is intended to prohibit a hospital from including assessment amounts paid in accordance with this section on their medicare and medicaid cost reports.

NEW SECTION. Sec. 5. EXEMPTIONS. The following hospitals are exempt from any assessment under this chapter provided that if and to the extent any exemption is held invalid by a court of competent jurisdiction or by the centers for medicare and medicaid services, hospitals previously exempted shall be liable for assessments due after the date of final invalidation:

(1) Hospitals owned or operated by an agency of federal or state government, including but not limited to western state hospital and eastern state hospital;

(2) Washington public hospitals that participate in the certified public expenditure program;

(3) Hospitals that do not charge directly or indirectly for hospital services; and

(4) Long-term acute care hospitals.

NEW SECTION. Sec. 6. ADMINISTRATION AND COLLECTION. (1) The department, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual hospitals, notifying individual hospitals of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Transmittal of quarterly notices of assessment by the department to each hospital informing the hospital of its nonmedicare hospital inpatient days and the assessment amount due and payable. Such quarterly notices shall be sent to each hospital at least thirty calendar days prior to the due date for the quarterly assessment payment.

(b) Interest on delinquent assessments at the rate specified in RCW 82.32.050.

(c) Adjustment of the assessment amounts as follows:

(i) For each fiscal year beginning July 1, 2010, the assessment amounts under section 4 (1) and (3) of this act may be adjusted as follows:

(A) If sufficient other funds for hospitals, excluding any extension of section 5001 of P.L. No. 111-5, are available to support the reimbursement rates and other payments under section 9, 10, 11, 12, or 13 of this act without utilizing the full assessment authorized under section 4 (1) or (3) of this act, the department shall reduce the amount of the assessment for prospective payment system,

psychiatric, and rehabilitation hospitals proportionately to the minimum level necessary to support those reimbursement rates and other payments.

(B) Provided that none of the conditions set forth in section 17(2) of this act have occurred, if the department's forecasts indicate that the assessment amounts under section 4 (1) and (3) of this act, together with all other available funds, are not sufficient to support the reimbursement rates and other payments under section 9, 10, 11, 12, or 13 of this act, the department shall increase the assessment rates for prospective payment system, psychiatric, and rehabilitation hospitals proportionately to the amount necessary to support those reimbursement rates and other payments, plus a contingency factor up to ten percent of the total assessment amount.

(C) Any positive balance remaining in the fund at the end of the fiscal year shall be applied to reduce the assessment amount for the subsequent fiscal year.

(ii) Any adjustment to the assessment amounts pursuant to this subsection, and the data supporting such adjustment, including but not limited to relevant data listed in subsection (2) of this section, must be submitted to the Washington state hospital association for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington state hospital association shall not limit the ability of the Washington state hospital association or its members to challenge an adjustment or other action by the department that is not made in accordance with this chapter.

(2) By November 30th of each year, the department shall provide the following data to the Washington state hospital association:

(a) The fund balance;

(b) The amount of assessment paid by each hospital;

(c) The annual medicaid fee-for-service payments for inpatient hospital services and outpatient hospital services; and

(d) The medicaid healthy options inpatient and outpatient payments as reported by all hospitals to the department on disproportionate share hospital applications. The department shall amend the disproportionate share hospital application and reporting instructions as needed to ensure that the foregoing data is reported by all hospitals as needed in order to comply with this subsection (2)(d).

(3) The department shall determine the number of nonmedicare hospital inpatient days for each hospital for each assessment period.

(4) To the extent necessary, the department shall amend the contracts between the managed care organizations and the department and between regional support networks and the department to incorporate the provisions of section 13 of this act. The department shall pursue amendments to the contracts as soon as possible after the effective date of this act. The amendments to the contracts shall, among other provisions, provide for increased payment rates to managed care organizations in accordance with section 13 of this act.

**NEW SECTION. Sec. 7. LOCAL ASSESSMENTS OR TAXES NOT AUTHORIZED.** Nothing in this chapter shall be construed to authorize any unit of local government to impose a tax or assessment on hospitals, including but not limited to a tax or assessment measured by a hospital's income, earnings, bed days, or other similar measures.

**NEW SECTION. Sec. 8. ASSESSMENT PART OF OPERATING OVERHEAD.** The incidence and burden of assessments imposed under this chapter shall be on hospitals and the expense associated with the assessments shall constitute a part of the operating overhead of hospitals. Hospitals shall not increase charges or billings to patients or third-party payers as a result of the assessments under this chapter. The department may require hospitals to submit certified statements by their chief financial officers or equivalent officials attesting that they have not increased charges or billings as a result of the assessments.

**NEW SECTION. Sec. 9. RESTORATION OF JUNE 30, 2009, REIMBURSEMENT RATES.** Upon satisfaction of the applicable conditions set forth in section 17(1) of this act, the department shall:

(1) Restore medicaid inpatient and outpatient reimbursement rates to levels as if the four percent medicaid inpatient and outpatient rate reductions did not occur on July 1, 2009; and

(2) Recalculate the amount payable to each hospital that submitted an otherwise allowable claim for inpatient and outpatient medicaid-covered services rendered from and after July 1, 2009, up to and including the date when the applicable conditions under section 17(1) of this act have been satisfied, as if the four percent medicaid inpatient and outpatient rate reductions did not occur effective July 1, 2009, and, within sixty calendar days after the date upon which the applicable conditions set forth in section 17(1) of this act have been satisfied, remit the difference to each hospital.

**NEW SECTION. Sec. 10. INCREASED HOSPITAL PAYMENTS.** (1) Upon satisfaction of the applicable conditions set forth in section 17(1) of this act and for services rendered on or after February 1, 2010, the department shall increase the medicaid inpatient and outpatient fee-for-service hospital reimbursement rates in effect on June 30, 2009, by the percentages specified below:

(a) Prospective payment system hospitals:

(i) Inpatient psychiatric services: Thirteen percent;

(ii) Inpatient services: Thirteen percent;

(iii) Outpatient services: Thirty-six and eighty-three one-hundredths percent.

(b) Harborview medical center and University of Washington medical center:

(i) Inpatient psychiatric services: Three percent;

(ii) Inpatient services: Three percent;

(iii) Outpatient services: Twenty-one percent.

(c) Rehabilitation hospitals:

(i) Inpatient services: Thirteen percent;

(ii) Outpatient services: Thirty-six and eighty-three one-hundredths percent;

(d) Psychiatric hospitals:

(i) Inpatient psychiatric services: Thirteen percent;

(ii) Inpatient services: Thirteen percent.

(2) For claims processed for services rendered on or after February 1, 2010, but prior to satisfaction of the applicable conditions specified in section 17(1) of this act, the department shall, within sixty calendar days after satisfaction of those conditions, calculate the amount payable to hospitals in accordance with this section and remit the difference to each hospital that has submitted an otherwise allowable claim for payment for such services.

(3) By December 1, 2012, the department will submit a study to the legislature with recommendations on the amount of the assessments necessary to continue to support hospital payments for the 2013-15 biennium. The evaluation will assess medicaid hospital payments relative to medicaid hospital costs. The study should address current federal law, including any changes on scope of medicaid coverage, provisions related to provider taxes, and impacts of federal health care reform legislation. The study should also address the state's economic forecast. Based on the forecast, the department should recommend the amount of assessment needed to support future hospital payments and the departmental administrative expenses. Recommendations should be developed with the fiscal committees of the legislature, office of financial management and the Washington state hospital association.

**NEW SECTION. Sec. 11. CRITICAL ACCESS HOSPITAL PAYMENTS.** Upon satisfaction of the applicable conditions set forth in section 17(1) of this act, the department shall pay critical access hospitals that do not qualify for or receive a small rural disproportionate share payment in the subject state fiscal year an access payment of fifty dollars for each medicaid inpatient day, exclusive of days on which a swing bed is used for subacute care,

from and after July 1, 2009. Initial payments to hospitals, covering the period from July 1, 2009, to the date when the applicable conditions under section 17(1) of this act are satisfied, shall be made within sixty calendar days after such conditions are satisfied. Subsequent payments shall be made to critical access hospitals on an annual basis at the time that disproportionate share eligibility and payment for the state fiscal year are established. These payments shall be in addition to any other amount payable with respect to services provided by critical access hospitals and shall not reduce any other payments to critical access hospitals.

**NEW SECTION. Sec. 12. DISPROPORTIONATE SHARE HOSPITAL PAYMENTS.** Upon satisfaction of the applicable conditions set forth in section 17(1) of this act, small rural disproportionate share payments shall be increased to one hundred twenty percent of the level in effect as of June 30, 2009, for the period from and after July 1, 2009, until July 1, 2013. Initial payments, covering the period from July 1, 2009, to the date when the applicable conditions under section 17(1) of this act are satisfied, shall be made within sixty calendar days after those conditions are satisfied. Subsequent payments shall be made directly to hospitals by the department on a periodic basis.

**NEW SECTION. Sec. 13. INCREASED MANAGED CARE PAYMENTS AND CORRESPONDING PAYMENTS TO HOSPITALS.** Subject to the applicable conditions set forth in section 17(1) of this act, the department shall:

(1) Amend medicaid-managed care and regional support network contracts as necessary in order to ensure compliance with this chapter;

(2) With respect to the inpatient and outpatient rates established by section 9 of this act:

(a) Upon satisfaction of the applicable conditions under section 17(1) of this act, increase payments to managed care organizations and regional support networks as necessary to ensure that hospitals are reimbursed in accordance with section 9(1) of this act for services rendered from and after the date when applicable conditions under section 17(1) of this act have been satisfied, and pay an additional amount equal to the estimated amount of additional state taxes on managed care organizations or regional support networks due as a result of the payments under this section, and require managed care organizations and regional support networks to make payments to each hospital in accordance with section 9 of this act. The increased payments made to hospitals pursuant to this subsection shall be in addition to any other amounts payable to hospitals by managed care organizations or regional support networks and shall not affect any other payments to hospitals;

(b) Within sixty calendar days after satisfaction of the applicable conditions under section 17(1) of this act, calculate the additional amount due to each hospital to pay claims submitted for inpatient and outpatient medicaid-covered services rendered from and after July 1, 2009, through the date when the applicable conditions under section 17(1) of this act have been satisfied, based on the rates required by section 9(2) of this act, make payments to managed care organizations and regional support networks in amounts sufficient to pay the additional amounts due to each hospital plus an additional amount equal to the estimated amount of additional state taxes on managed care organizations or regional support networks due as a result of the payments under this subsection, and require managed care organizations and regional support networks to make payments to each hospital in accordance with the department's calculations within forty-five calendar days after the department disburses funds for those purposes.

(3) With respect to the inpatient and outpatient hospital rates established by section 10 of this act:

(a) Upon satisfaction of the applicable conditions under section 17(1) of this act, increase payments to managed care organizations and regional support networks as necessary to ensure that hospitals are reimbursed in accordance with section 10 of this act, and pay an

additional amount equal to the estimated amount of additional state taxes on managed care organizations or regional support networks due as a result of the payments under this section;

(b) Require managed care organizations and regional support networks to reimburse hospitals for hospital inpatient and outpatient services rendered after the date that the applicable conditions under section 17(1) of this act are satisfied at rates no lower than the combined rates established by sections 9 and 10 of this act;

(c) Within sixty calendar days after satisfaction of the applicable conditions under section 17(1) of this act, calculate the additional amount due to each hospital to pay claims submitted for inpatient and outpatient medicaid-covered services rendered from and after February 1, 2010, through the date when the applicable conditions under section 17(1) of this act are satisfied based on the rates required by section 10 of this act, make payments to managed care organizations and regional support networks in amounts sufficient to pay the additional amounts due to each hospital plus an additional amount equal to the estimated amount of additional state taxes on managed care organizations or regional support networks, and require managed care organizations and regional support networks to make payments to each hospital in accordance with the department's calculations within forty-five calendar days after the department disburses funds for those purposes;

(d) Require managed care organizations that contract with health care organizations that provide, directly or by contract, health care services on a prepaid or capitated basis to make payments to health care organizations for any of the hospital payments that the managed care organizations would have been required to pay to hospitals under this section if the managed care organizations did not contract with those health care organizations, and require the managed care organizations to require those health care organizations to make equivalent payments to the hospitals that would have received payments under this section if the managed care organizations did not contract with the health care organizations;

(4) The department shall ensure that the increases to the medicaid fee schedules as described in section 10 of this act are included in the development of healthy options premiums.

(5) The department may require managed care organizations and regional support networks to demonstrate compliance with this section.

**NEW SECTION. Sec. 14. QUALITY INCENTIVE PAYMENTS.** (1) The department, in collaboration with the health care authority, the department of health, the department of labor and industries, the Washington state hospital association, the Puget Sound health alliance, and the forum, a collaboration of health carriers, physicians, and hospitals in Washington state, shall design a system of hospital quality incentive payments. The design of the system shall be submitted to the relevant policy and fiscal committees of the legislature by December 15, 2010. The system shall be based upon the following principles:

(a) Evidence-based treatment and processes shall be used to improve health care outcomes for hospital patients;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common quality improvement measures by public and private health care purchasers, while recognizing that some measures may not be appropriate for application to specialty pediatric, psychiatric, or rehabilitation hospitals;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to hospitals should be minimized by giving priority to measures hospitals are currently required to report to governmental agencies,

such as the hospital compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for hospitals to achieve, yet represent real improvements in quality and performance for a majority of hospitals in Washington state; and

(e) Hospital performance and incentive payments should be designed in a manner such that all noncritical access hospitals in Washington are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) Upon satisfaction of the applicable conditions set forth in section 17(1) of this act, and for state fiscal year 2013 and each fiscal year thereafter, assessments may be increased to support an additional one percent increase in inpatient hospital rates for noncritical access hospitals that meet the quality incentive benchmarks established under this section.

**NEW SECTION. Sec. 15.** A new section is added to chapter 70.47 RCW to read as follows:

The increases in inpatient and outpatient reimbursement rates included in chapter 74.--- RCW (the new chapter created in section 23 of this act) shall not be reflected in hospital payment rates for services provided to basic health enrollees under this chapter.

**NEW SECTION. Sec. 16. MULTIHOSPITAL LOCATIONS, NEW HOSPITALS, AND CHANGES IN OWNERSHIP.** (1) If an entity owns or operates more than one hospital subject to assessment under this chapter, the entity shall pay the assessment for each hospital separately. However, if the entity operates multiple hospitals under a single medicaid provider number, it may pay the assessment for the hospitals in the aggregate.

(2) Notwithstanding any other provision of this chapter, if a hospital subject to the assessment imposed under this chapter ceases to conduct hospital operations throughout a state fiscal year, the assessment for the quarter in which the cessation occurs shall be adjusted by multiplying the assessment computed under section 4 (1) and (3) of this act by a fraction, the numerator of which is the number of days during the year which the hospital conducts, operates, or maintains the hospital and the denominator of which is three hundred sixty-five. Immediately prior to ceasing to conduct, operate, or maintain a hospital, the hospital shall pay the adjusted assessment for the fiscal year to the extent not previously paid.

(3) Notwithstanding any other provision of this chapter, in the case of a hospital that commences conducting, operating, or maintaining a hospital that is not exempt from payment of the assessment under section 5 of this act and that did not conduct, operate, or maintain such hospital throughout the cost reporting year used to determine the assessment amount, the assessment for that hospital shall be computed on the basis of the actual number of nonmedicare inpatient days reported to the department by the hospital on a quarterly basis. The hospital shall be eligible to receive increased payments under this chapter beginning on the date it commences hospital operations.

(4) Notwithstanding any other provision of this chapter, if a hospital previously subject to assessment is sold or transferred to another entity and remains subject to assessment, the assessment for that hospital shall be computed based upon the cost report data previously submitted by that hospital. The assessment shall be allocated between the transferor and transferee based on the number of days within the assessment period that each owned, operated, or maintained the hospital.

**NEW SECTION. Sec. 17. CONDITIONS.** (1) The assessment, collection, and disbursement of funds under this chapter shall be conditional upon:

(a) Withdrawal of those aspects of any pending state plan amendments previously submitted to the centers for medicare and medicaid services that are inconsistent with this chapter, specifically

any pending state plan amendment related to the four percent rate reductions for inpatient and outpatient hospital rates and elimination of the small rural disproportionate share hospital payment program as implemented July 1, 2009;

(b) Approval by the centers for medicare and medicaid services of any state plan amendments or waiver requests that are necessary in order to implement the applicable sections of this chapter;

(c) To the extent necessary, amendment of contracts between the department and managed care organizations in order to implement this chapter; and

(d) Certification by the office of financial management that appropriations have been adopted that fully support the rates established in this chapter for the upcoming fiscal year.

(2) This chapter does not take effect or ceases to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals, if and to the extent that:

(a) An appellate court or the centers for medicare and medicaid services makes a final determination that any element of this chapter, other than section 11 of this act, cannot be validly implemented;

(b) Medicaid inpatient or outpatient reimbursement rates for hospitals are reduced below the combined rates established by sections 9 and 10 of this act;

(c) Except for payments to the University of Washington medical center and harborview medical center, payments to hospitals required under sections 9, 10, 12, and 13 of this act are not eligible for federal matching funds;

(d) Other funding available for the medicaid program is not sufficient to maintain medicaid inpatient and outpatient reimbursement rates for hospitals and small rural disproportionate share payments at one hundred percent of the levels in effect on July 1, 2009; or

(e) The fund is used as a substitute for or to supplant other funds, except as authorized by section 3(3)(e) of this act.

**NEW SECTION. Sec. 18. SEVERABILITY.** (1) The provisions of this chapter are not severable: If the conditions set forth in section 17(1) of this act are not satisfied or if any of the circumstances set forth in section 17(2) of this act should occur, this entire chapter shall have no effect from that point forward, except that if the payment under section 11 of this act, or the application thereof to any hospital or circumstances does not receive approval by the centers for medicare and medicaid services as described in section 17(1)(b) of this act or is determined to be unconstitutional or otherwise invalid, the other provisions of this chapter or its application to hospitals or circumstances other than those to which it is held invalid shall not be affected thereby.

(2) In the event that any portion of this chapter shall have been validly implemented and the entire chapter is later rendered ineffective under this section, prior assessments and payments under the validly implemented portions shall not be affected.

(3) In the event that the payment under section 11 of this act, or the application thereof to any hospital or circumstances does not receive approval by the centers for medicare and medicaid services as described in section 17(1)(b) of this act or is determined to be unconstitutional or otherwise invalid, the amount of the assessment shall be adjusted under section 6(1)(c) of this act.

**Sec. 19.** 2009 c 564 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--MEDICAL ASSISTANCE PROGRAM**

General Fund--State Appropriation (FY 2010).....	
General Fund--State Appropriation (FY 2011).....	
General Fund--Federal Appropriation .....	
General Fund--Private/Local Appropriation.....	
Emergency Medical Services and Trauma Care Systems	



Trust Account--State Appropriation.....	by the state, except those classified as critical access hospitals or psychiatric institutions. The department shall submit reports to the
Tobacco Prevention and Control Account--	governor and legislature by November 1, 2009, and by November 1, 2010, that evaluate whether savings continue to exceed \$8,245,000
State Appropriation .....	program. If the certified public expenditures (CPE) program in its
TOTAL APPROPRIATION.....	current form is no longer cost-effective to maintain, the department shall submit a report to the governor and legislature detailing cost-effective alternative uses of local, state, and federal resources as a replacement for this program. During fiscal year 2010 and fiscal year 2011, hospitals in the program shall be paid and shall retain one hundred percent of the federal portion of the allowable hospital cost for each medicaid inpatient fee-for-service claim payable by medical assistance and one hundred percent of the federal portion of the maximum disproportionate share hospital payment allowable under federal regulations. Inpatient medicaid payments shall be established using an allowable methodology that approximates the cost of claims submitted by the hospitals. Payments made to each hospital in the program in each fiscal year of the biennium shall be compared to a baseline amount. The baseline amount will be determined by the total of (a) the inpatient claim payment amounts that would have been paid during the fiscal year had the hospital not been in the CPE program based on the reimbursement rates developed, implemented, and consistent with policies approved in the 2009-11 biennial operating appropriations act (chapter 564, Laws of 2009) and in effect on July 1, 2009, (b) one half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005, and (c) all of the other disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005 to the extent the same disproportionate share hospital programs exist in the 2009-11 biennium. If payments during the fiscal year exceed the hospital's baseline amount, no additional payments will be made to the hospital except the federal portion of allowable disproportionate share hospital payments for which the hospital can certify allowable match. If payments during the fiscal year are less than the baseline amount, the hospital will be paid a state grant equal to the difference between payments during the fiscal year and the applicable baseline amount. Payment of the state grant shall be made in the applicable fiscal year and distributed in monthly payments. The grants will be recalculated and redistributed as the baseline is updated during the fiscal year. The grant payments are subject to an interim settlement within eleven months after the end of the fiscal year. A final settlement shall be performed. To the extent that either settlement determines that a hospital has received funds in excess of what it would have received as described in this subsection, the hospital must repay the excess amounts to the state when requested. \$6,570,000 of the general fund-- state appropriation for fiscal year 2010, which is appropriated in section 204(1) of this act, and \$1,500,000 of the general fund--state appropriation for fiscal year 2011, which is appropriated in section 204(1) of this act, are provided solely for state grants for the participating hospitals. Sufficient amounts are appropriated in this section for the remaining state grants for the participating hospitals. <u>CPE hospitals will receive the inpatient and outpatient reimbursement rate restorations in section 9 and rate increases in section 10 (1) (b) of Engrossed Second Substitute House Bill 2956 (hospital safety net assessment) funded through the hospital safety net assessment fund rather than through the baseline mechanism specified in this section.</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Based on quarterly expenditure reports and caseload forecasts, if the department estimates that expenditures for the medical assistance program will exceed the appropriations, the department shall take steps including but not limited to reduction of rates or elimination of optional services to reduce expenditures so that total program costs do not exceed the annual appropriation authority.

(2) In determining financial eligibility for medicaid-funded services, the department is authorized to disregard recoveries by Holocaust survivors of insurance proceeds or other assets, as defined in RCW 48.104.030.

(3) The legislature affirms that it is in the state's interest for Harborview medical center to remain an economically viable component of the state's health care system.

(4) When a person is ineligible for medicaid solely by reason of residence in an institution for mental diseases, the department shall provide the person with the same benefits as he or she would receive if eligible for medicaid, using state-only funds to the extent necessary.

(5) In accordance with RCW 74.46.625, \$6,000,000 of the general fund--federal appropriation is provided solely for supplemental payments to nursing homes operated by public hospital districts. The public hospital district shall be responsible for providing the required nonfederal match for the supplemental payment, and the payments shall not exceed the maximum allowable under federal rules. It is the legislature's intent that the payments shall be supplemental to and shall not in any way offset or reduce the payments calculated and provided in accordance with part E of chapter 74.46 RCW. It is the legislature's further intent that costs otherwise allowable for rate- setting and settlement against payments under chapter 74.46 RCW shall not be disallowed solely because such costs have been paid by revenues retained by the nursing home from these supplemental payments. The supplemental payments are subject to retrospective interim and final cost settlements based on the nursing homes' as-filed and final medicare cost reports. The timing of the interim and final cost settlements shall be at the department's discretion. During either the interim cost settlement or the final cost settlement, the department shall recoup from the public hospital districts the supplemental payments that exceed the medicaid cost limit and/or the medicare upper payment limit. The department shall apply federal rules for identifying the eligible incurred medicaid costs and the medicare upper payment limit.

(6) \$1,110,000 of the general fund--federal appropriation and \$1,105,000 of the general fund--state appropriation for fiscal year 2011 are provided solely for grants to rural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to hospitals that (a) serve a disproportionate share of low-income and medically indigent patients, and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(7) \$9,818,000 of the general fund--state appropriation for fiscal year 2011, and \$9,865,000 of the general fund--federal appropriation are provided solely for grants to nonrural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to hospitals that (a) serve a disproportionate share of low-income and medically indigent patients, and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(8) The department shall continue the inpatient hospital certified public expenditures program for the 2009-11 biennium. The program shall apply to all public hospitals, including those owned or operated

by the state, except those classified as critical access hospitals or psychiatric institutions. The department shall submit reports to the governor and legislature by November 1, 2009, and by November 1, 2010, that evaluate whether savings continue to exceed \$8,245,000 program. If the certified public expenditures (CPE) program in its current form is no longer cost-effective to maintain, the department shall submit a report to the governor and legislature detailing cost-effective alternative uses of local, state, and federal resources as a replacement for this program. During fiscal year 2010 and fiscal year 2011, hospitals in the program shall be paid and shall retain one hundred percent of the federal portion of the allowable hospital cost for each medicaid inpatient fee-for-service claim payable by medical assistance and one hundred percent of the federal portion of the maximum disproportionate share hospital payment allowable under federal regulations. Inpatient medicaid payments shall be established using an allowable methodology that approximates the cost of claims submitted by the hospitals. Payments made to each hospital in the program in each fiscal year of the biennium shall be compared to a baseline amount. The baseline amount will be determined by the total of (a) the inpatient claim payment amounts that would have been paid during the fiscal year had the hospital not been in the CPE program based on the reimbursement rates developed, implemented, and consistent with policies approved in the 2009-11 biennial operating appropriations act (chapter 564, Laws of 2009) and in effect on July 1, 2009, (b) one half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005, and (c) all of the other disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005 to the extent the same disproportionate share hospital programs exist in the 2009-11 biennium. If payments during the fiscal year exceed the hospital's baseline amount, no additional payments will be made to the hospital except the federal portion of allowable disproportionate share hospital payments for which the hospital can certify allowable match. If payments during the fiscal year are less than the baseline amount, the hospital will be paid a state grant equal to the difference between payments during the fiscal year and the applicable baseline amount. Payment of the state grant shall be made in the applicable fiscal year and distributed in monthly payments. The grants will be recalculated and redistributed as the baseline is updated during the fiscal year. The grant payments are subject to an interim settlement within eleven months after the end of the fiscal year. A final settlement shall be performed. To the extent that either settlement determines that a hospital has received funds in excess of what it would have received as described in this subsection, the hospital must repay the excess amounts to the state when requested. \$6,570,000 of the general fund-- state appropriation for fiscal year 2010, which is appropriated in section 204(1) of this act, and \$1,500,000 of the general fund--state appropriation for fiscal year 2011, which is appropriated in section 204(1) of this act, are provided solely for state grants for the participating hospitals. Sufficient amounts are appropriated in this section for the remaining state grants for the participating hospitals. CPE hospitals will receive the inpatient and outpatient reimbursement rate restorations in section 9 and rate increases in section 10 (1) (b) of Engrossed Second Substitute House Bill 2956 (hospital safety net assessment) funded through the hospital safety net assessment fund rather than through the baseline mechanism specified in this section.

(9) The department is authorized to use funds appropriated in this section to purchase goods and supplies through direct contracting with vendors when the department determines it is cost-effective to do so.

(10) Sufficient amounts are appropriated in this section for the department to continue podiatry services for medicaid-eligible adults.

(11) Sufficient amounts are appropriated in this section for the department to provide an adult dental benefit that is at least equivalent to the benefit provided in the 2003-05 biennium.

(12) \$93,000 of the general fund--state appropriation for fiscal year 2010 and \$93,000 of the general fund--federal appropriation are provided solely for the department to pursue a federal Medicaid waiver pursuant to Second Substitute Senate Bill No. 5945 (Washington health partnership plan). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(13) The department shall require managed health care systems that have contracts with the department to serve medical assistance clients to limit any reimbursements or payments the systems make to providers not employed by or under contract with the systems to no more than the medical assistance rates paid by the department to providers for comparable services rendered to clients in the fee-for-service delivery system.

(14) Appropriations in this section are sufficient for the department to continue to fund family planning nurses in the community services offices.

(15) The department, in coordination with stakeholders, will conduct an analysis of potential savings in utilization of home dialysis. The department shall present its findings to the appropriate house of representatives and senate committees by December 2010.

(16) A maximum of \$166,875,000 of the general fund--state appropriation and \$38,389,000 of the general fund--federal appropriation may be expended in the fiscal biennium for the general assistance-unemployable medical program, and these amounts are provided solely for this program. Of these amounts, \$10,749,000 of the general fund--state appropriation for fiscal year 2010 and \$10,892,000 of the general fund--federal appropriation are provided solely for payments to hospitals for providing outpatient services to low income patients who are recipients of general assistance-unemployable. Pursuant to RCW 74.09.035, the department shall not expend for the general assistance medical care services program any amounts in excess of the amounts provided in this subsection.

(17) If the department determines that it is feasible within the amounts provided in subsection (16) of this section, and without the loss of federal disproportionate share hospital funds, the department shall contract with the carrier currently operating a managed care pilot project for the provision of medical care services to general assistance-unemployable clients. Mental health services shall be included in the services provided through the managed care system. If the department determines that it is feasible, effective October 1, 2009, in addition to serving clients in the pilot counties, the carrier shall expand managed care services to clients residing in at least the following counties: Spokane, Yakima, Chelan, Kitsap, and Cowlitz. If the department determines that it is feasible, the carrier shall complete implementation into the remaining counties. Total per person costs to the state, including outpatient and inpatient services and any additional costs due to stop loss agreements, shall not exceed the per capita payments projected for the general assistance-unemployable eligibility category, by fiscal year, in the February 2009 medical assistance expenditures forecast. The department, in collaboration with the carrier, shall seek to improve the transition rate of general assistance clients to the federal supplemental security income program.

(18) The department shall evaluate the impact of the use of a managed care delivery and financing system on state costs and outcomes for general assistance medical clients. Outcomes measured shall include state costs, utilization, changes in mental health status and symptoms, and involvement in the criminal justice system.

(19) The department shall report to the governor and the fiscal committees of the legislature by June 1, 2010, on its progress toward achieving a twenty percentage point increase in the generic prescription drug utilization rate.

(20) State funds shall not be used by hospitals for advertising purposes.

(21) The department shall seek a medicaid state plan amendment to create a professional services supplemental payment program for

University of Washington medicine professional providers no later than July 1, 2009. The department shall apply federal rules for identifying the shortfall between current fee-for-service medicaid payments to participating providers and the applicable federal upper payment limit. Participating providers shall be solely responsible for providing the local funds required to obtain federal matching funds. Any incremental costs incurred by the department in the development, implementation, and maintenance of this program will be the responsibility of the participating providers. Participating providers will retain the full amount of supplemental payments provided under this program, net of any potential costs for any related audits or litigation brought against the state. The department shall report to the governor and the legislative fiscal committees on the prospects for expansion of the program to other qualifying providers as soon as feasibility is determined but no later than December 31, 2009. The report will outline estimated impacts on the participating providers, the procedures necessary to comply with federal guidelines, and the administrative resource requirements necessary to implement the program. The department will create a process for expansion of the program to other qualifying providers as soon as it is determined feasible by both the department and providers but no later than June 30, 2010.

(22) \$9,350,000 of the general fund--state appropriation for fiscal year 2010, \$8,313,000 of the general fund--state appropriation for fiscal year 2011, and \$20,371,000 of the general fund--federal appropriation are provided solely for development and implementation of a replacement system for the existing medicaid management information system. The amounts provided in this subsection are conditioned on the department satisfying the requirements of section 902 of this act.

(23) \$506,000 of the general fund--state appropriation for fiscal year 2011 and \$657,000 of the general fund--federal appropriation are provided solely for the implementation of Second Substitute House Bill No. 1373 (children's mental health). If the bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(24) Pursuant to 42 U.S.C. Sec. 1396(a)(25), the department shall pursue insurance claims on behalf of medicaid children served through its in-home medically intensive child program under WAC 388-551-3000. The department shall report to the Legislature by December 31, 2009, on the results of its efforts to recover such claims.

(25) The department may, on a case-by-case basis and in the best interests of the child, set payment rates for medically intensive home care services to promote access to home care as an alternative to hospitalization. Expenditures related to these increased payments shall not exceed the amount the department would otherwise pay for hospitalization for the child receiving medically intensive home care services.

(26) \$425,000 of the general fund--state appropriation for fiscal year 2010, \$425,000 of the general fund--state appropriation for fiscal year 2011, and \$1,580,000 of the general fund--federal appropriation are provided solely to continue children's health coverage outreach and education efforts under RCW 74.09.470. These efforts shall rely on existing relationships and systems developed with local public health agencies, health care providers, public schools, the women, infants, and children program, the early childhood education and assistance program, child care providers, newborn visiting nurses, and other community-based organizations. The department shall seek public-private partnerships and federal funds that are or may become available to provide on-going support for outreach and education efforts under the federal children's health insurance program reauthorization act of 2009.

(27) The department, in conjunction with the office of financial management, shall ~~((reduce outpatient and inpatient hospital rates and))~~ implement a prorated inpatient payment policy. ~~((In determining the level of reductions needed, the department shall~~

~~include in its calculations services paid under fee for service, managed care, and certified public expenditure payment methods; but reductions shall not apply to payments for psychiatric inpatient services or payments to critical access hospitals.)~~

(28) The department will pursue a competitive procurement process for antihemophilic products, emphasizing evidence-based medicine and protection of patient access without significant disruption in treatment.

(29) The department will pursue several strategies towards reducing pharmacy expenditures including but not limited to increasing generic prescription drug utilization by 20 percentage points and promoting increased utilization of the existing mail-order pharmacy program.

(30) The department shall reduce reimbursement for over-the-counter medications while maintaining reimbursement for those over-the-counter medications that can replace more costly prescription medications.

(31) The department shall seek public-private partnerships and federal funds that are or may become available to implement health information technology projects under the federal American recovery and reinvestment act of 2009.

(32) The department shall target funding for maternity support services towards pregnant women with factors that lead to higher rates of poor birth outcomes, including hypertension, a preterm or low birth weight birth in the most recent previous birth, a cognitive deficit or developmental disability, substance abuse, severe mental illness, unhealthy weight or failure to gain weight, tobacco use, or African American or Native American race.

(33) The department shall direct graduate medical education funds to programs that focus on primary care training.

(34) \$79,000 of the general fund--state appropriation for fiscal year 2010 and \$53,000 of the general fund--federal appropriation are provided solely to implement Substitute House Bill No. 1845 (medical support obligations).

(35) \$63,000 of the general fund--state appropriation for fiscal year 2010, \$583,000 of the general fund--state appropriation for fiscal year 2011, and \$864,000 of the general fund--federal appropriation are provided solely to implement Engrossed House Bill No. 2194 (extraordinary medical placement for offenders). The department shall work in partnership with the department of corrections to identify services and find placements for offenders who are released through the extraordinary medical placement program. The department shall collaborate with the department of corrections to identify and track cost savings to the department of corrections, including medical cost savings, and to identify and track expenditures incurred by the aging and disability services program for community services and by the medical assistance program for medical expenses. A joint report regarding the identified savings and expenditures shall be provided to the office of financial management and the appropriate fiscal committees of the legislature by November 30, 2010. If this bill is not enacted by June 30, 2009, the amounts provided in this subsection shall lapse.

(36) Sufficient amounts are provided in this section to provide full benefit dual eligible beneficiaries with medicare part D prescription drug copayment coverage in accordance with RCW 74.09.520.

**Sec. 20.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and 2009 c 451 s 8 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but

no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization

account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 21. EXPIRATION.** This chapter expires July 1, 2013.

**NEW SECTION. Sec. 22.** Upon expiration of chapter 74.--RCW (the new chapter created in section 24 of this act), inpatient and outpatient hospital reimbursement rates shall return to a rate structure no higher than the rate structure in effect as of July 1, 2009, as if the four percent medicaid inpatient and outpatient rate reductions did not occur on July 1, 2009, or as otherwise specified in the 2013-15 biennial operating appropriations act.

**NEW SECTION. Sec. 23. EMERGENCY.** 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 immediately.

**NEW SECTION. Sec. 24. NEW CHAPTER.** Sections 1 through 14, 16 through 18, and 21 of this act constitute a new chapter in Title 74 RCW."

Correct the title.

and the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

There being no objection, the House advanced to the seventh order of business.

### THIRD READING

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2956 and advanced the bill as amended by the Senate to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Pettigrew spoke in favor of the passage of the bill.

Representative Alexander spoke against 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 House Bill No. 2956, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2956, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 66; Nays, 30; Absent, 0; Excused, 2.

Voting yea: Representatives Angel, Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Ross, Santos, Seaquist, Sells, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Armstrong, Bailey, Campbell, Chandler, Condotta, Crouse, Dammeier, DeBolt, Eddy, Ericksen, Fagan, Haler, Herrera, Hunter, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Roach, Schmick, Short, Simpson, Smith and Williams.

Excused: Representatives Shea and Wood.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2956, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### STATEMENT FOR THE JOURNAL

I intended to vote NAY on Engrossed Second Substitute House Bill No. 2956.

Matthew Shea, 4th District

**CONFERENCE COMMITTEE REPORT**

April 10, 2010

Second Engrossed Substitute Senate Bill No. 6143

Includes "New Item": YES

Mr. Speaker:

essential for the safety, health, and security of all Washingtonians, have had the same under consideration and we recommend that:

All previous amendments not be adopted and that the attached striking amendment (H-5847.5/10) be adopted

We of your Conference Committee, to whom was referred SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6143, , modifying excise tax laws to preserve funding for public schools, colleges, and universities, as other public systems

and that the bill do pass as recommended by the Conference Committee:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. In order to preserve funding for education, public safety, health care, environmental protection, and safety net services for children, elderly, disabled, and vulnerable people, it is the intent of the legislature to close obsolete tax preferences, clarify the legislature's intent regarding existing tax policy, and to ensure balanced tax policy while bolstering emerging industries.

**PART I****Minimum Nexus Standards**

NEW SECTION. Sec. 101. (1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income for state business and occupation tax purposes.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

(d) Nothing in this part is intended to modify the nexus and apportionment requirements for local gross receipts business and occupation taxes.

**Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended to read as follows:

(1) There is levied and ((shall be)) collected from every person that has a substantial nexus with this state a tax for the act or privilege of engaging in business activities. ((Such)) The tax ((shall be)) is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

(2) A person who has a substantial nexus with this state in any tax year will be deemed to have a substantial nexus with this state for the following tax year.

NEW SECTION. Sec. 103. A new section is added to chapter 82.04 RCW to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

NEW SECTION. Sec. 104. A new section is added to chapter 82.04 RCW to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if the person is:

(a) An individual and is a resident or domiciliary of this state;

(b) A business entity and is organized or commercially domiciled in this state; or

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any tax year the person has:

(i) More than fifty thousand dollars of property in this state;

(ii) More than fifty thousand dollars of payroll in this state;

(iii) More than two hundred fifty thousand dollars of receipts from this state; or

(iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(2)(a) Property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section is the average value of the taxpayer's property, including intangible property, owned or rented and used in this state during the tax year.

(b)(i) Property owned by the taxpayer, other than loans and credit card receivables owned by the taxpayer, is valued at its original cost basis. Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(ii) Property rented by the taxpayer is valued at eight times the net annual rental rate. For purposes of this subsection, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property must be determined by averaging the values at the beginning and ending of the tax year; but the department may require the averaging of monthly values during the tax year if reasonably required to properly reflect the average value of the taxpayer's property.

(d)(i) For purposes of this subsection (2), loans and credit card receivables are deemed owned and used in this state as follows:

(A) Loans secured by real property, personal property, or both real and personal property, are deemed owned and used in the state if the real property or personal property securing the loan is located within this state. If the property securing the loan is located both within this state and one or more other states, the loan is deemed owned and used in this state if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the loan is deemed owned and used in this state if the borrower is located in this state. The determination of whether the real or personal property securing a loan is located within this state must be made, as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded.

(B) Loans not secured by real or personal property are deemed owned and used in this state if the borrower is located in this state.

(C) Credit card receivables are deemed owned and used in this state if the billing address of the cardholder is in this state.

(ii)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

(B) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) Notwithstanding anything else to the contrary in this subsection, property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section does not include a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; and digital goods and digital codes residing on servers located in this state.

(3)(a) Payroll counting toward the thresholds in subsection (1)(c)(ii) and (iv) of this section is the total amount paid by the taxpayer for compensation in this state during the tax year plus nonemployee compensation paid to representative third parties in this state. Nonemployee compensation paid to representative third parties includes the gross amount paid to nonemployees who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(b) Employee compensation is paid in this state if the compensation is properly reportable to this state for unemployment compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(d) For purposes of this subsection, "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees or nonemployees and defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as existing on the effective date of this section.

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are those amounts included in the numerator of the receipts factor under section 105 of this act and, for financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2).

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of the effective date of this section, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of the effective date of this section, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor.

(6) Subsections (1) through (5) of this section only apply with respect to the taxes imposed under this chapter on apportionable activities as defined in RCW 82.04.460. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state. A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

**NEW SECTION. Sec. 105.** A new section is added to chapter 82.04 RCW to read as follows:

(1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(4)(a) (i) through (x) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and, for financial institutions, as provided in the rule adopted by the department under the authority of RCW 82.04.460(2).

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or (vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have a substantial nexus with that state under the standards in section 104(1) of this act regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in subsection (4) of this section and the rule adopted by the department under the authority of RCW 82.04.460(2) with respect to apportionable income taxable under RCW 82.04.290. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x) must calculate a separate receipts factor, as provided in this section, for each of the other tax classifications that the financial institution is taxable under.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**Sec. 106.** RCW 82.04.2907 and 2009 c 535 s 407 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))~~ the business ~~((shall be))~~ is 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, "gross income from royalties" means compensation for the use of intangible property, ~~((such as))~~ including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. ~~((H))~~ "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing ~~((or use))~~ of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

**Sec. 107.** RCW 82.04.2907 and 2010 c 111 (SHB 2620) s 302 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 the business is 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, "gross income from royalties" means compensation for the use of intangible property, ~~((such as))~~ including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. ~~((H))~~ "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

**Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read as follows:



(1) ~~Except as otherwise provided in this section, any person ((rendering services)) earning apportionable income taxable under ((RCW 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of business both within and without this state which contribute to the rendition of such services shall)) also taxable in another state, must, for the purpose of computing tax liability under ((RCW 82.04.290 or 82.04.2908)) this chapter, apportion to this state, in accordance with section 105 of this act, that portion of the person's ((gross)) apportionable income ((which is)) derived from ((services rendered)) business activities performed within this state. ((Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.))~~

(2) ~~((Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.)) The department must by rule provide a method of apportioning the apportionable income of financial institutions, where such apportionable income is taxable under RCW 82.04.290. The rule adopted by the department must, to the extent feasible, be consistent with the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, except that:~~

~~(a) The department's rule must provide for a single factor apportionment method based on the receipts factor; and~~

~~(b) The definition of "financial institution" contained in appendix A to the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions is advisory only.~~

(3) The department ~~((shall))~~ may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service~~((s))~~ taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. ~~((The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.))~~ The rule must provide for an equitable and constitutionally permissible division of the tax base.

(4) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

(i) RCW 82.04.255;

(ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

(iii) RCW 82.04.280(5);

(iv) RCW 82.04.285;

(v) RCW 82.04.286;

(vi) RCW 82.04.290;

(vii) RCW 82.04.2907;

(viii) RCW 82.04.2908;

(ix) RCW 82.04.263, but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (4) if the tax classification in RCW 82.04.263 did not exist; and

(x) RCW 82.04.260(13) and 82.04.280(1), but only with respect to advertising.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in section 104(1) of this act.

(ii) For purposes of this subsection (4)(b), "business activities tax" and "state" have the same meaning as in section 105 of this act.

**Sec. 109.** RCW 82.04.080 and 1961 c 15 s 82.04.080 are each amended to read as follows:

(1) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business 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.

(2) Financial institutions must determine gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis. For purposes of this subsection, a financial institution means a person within the scope of the rule adopted by the department under the authority of RCW 82.04.460(2).

**NEW SECTION. Sec. 110.** A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by a financial institution from an affiliated person if the amounts are received from transactions that are required to be at arm's length under sections 23A or 23B of the federal reserve act as existing on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. For purposes of this subsection, "financial institution" has the same meaning as in RCW 82.04.080.

(2) As used in this section, "affiliated" means under common control. "Common control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

**NEW SECTION. Sec. 111.** A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by investment conduits or securitization entities from cash and securities.

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

(a) "Investment conduit" means an entity formed by a financial institution as defined in RCW 82.04.080 for the express purpose of holding or owning cash or securities if the entity formed:

- (i) Has no employees;
- (ii) Has no direct profit-making motive;
- (iii) Owns no tangible assets, other than cash or securities;
- (iv) Holds or owns cash or securities solely as a conduit, allocating its income to holders of its ownership interests; and
- (v) Has, within twelve months of its organization or initial capitalization date, issued ownership interests to other than affiliated persons, equal to or greater than twenty-five percent of its total issued ownership interests.

(b) "Securities" has the same meaning as in section 2 of the securities act of 1933 and includes eligible assets as defined by Rule 3a-7 of the investment company act, as the law and rule exist on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(c) "Securitization entity" means an entity created by a bank holding company if the entity created:

- (i) Has no employees;
- (ii) Has no direct profit-making motive;
- (iii) Owns no tangible assets, other than cash, fixed or revolving discrete pools of credit or charge card receivables originated by a financial institution, or securities;
- (iv) Acts solely as a conduit, allocating its income to holders of its ownership interests; and
- (v) Has as its sole business activities the:
  - (A) Acquisition of such discrete pools of credit or charge card receivables; and
  - (B) Issuance or causing the issuance of securities primarily to persons not affiliated with the entity.

(d) "Bank holding company" has the same meaning as provided in the bank holding company act of 1956, as existing on the effective date of this section or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(e) "No direct profit-making motive" means that all of an entity's income, less a reasonable servicing fee, is paid to holders of its ownership interests.

(f) "Ownership interest" means interests categorized as debt or equity for purposes of federal tax or generally accepted accounting principles.

(g) "Affiliated" has the same meaning as in section 110 of this act.

**NEW SECTION. Sec. 112.** A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing tax there may be deducted from the measure of tax interest and fees on loans secured by commercial aircraft primarily used to provide routine air service and owned by:

- (a) An air carrier, as defined in RCW 82.42.030, which is primarily engaged in the business of providing passenger air service;
- (b) An affiliate of such air carrier; or
- (c) A parent entity for which such air carrier is an affiliate.

(2) The deduction authorized under this section is not available to any person who is physically present in this state as determined under section 104(6) of this act.

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

- (a) "Affiliate" means a person is "affiliated," as defined in section 110 of this act, with another person; and
- (b) "Commercial aircraft" means a commercial airplane as defined in RCW 82.32.550.

## PART II

### Tax Avoidance Transactions

**NEW SECTION. Sec. 201.** A new section is added to chapter 82.32 RCW to read as follows:

(1) It is the legislature's intent to require all taxpayers to pay their fair share of taxes. To accomplish this purpose, it is the legislature's intent to stop transactions or arrangements that are designed to unfairly avoid taxes.

(2) The department must disregard, for tax purposes, the tax avoidance transactions or arrangements that are described in subsection (3) of this section. The department must deny the tax benefit that would otherwise result from the tax avoidance transaction or arrangement. In determining whether the department must disregard a transaction or arrangement described under subsection (3) of this section, the department may consider:

- (a) Whether an arrangement or transaction changes in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole;
- (b) Whether substantial nontax reasons exist for entering into an arrangement or transaction;
- (c) Whether an arrangement or transaction is a reasonable means of accomplishing a substantial nontax purpose;
- (d) An entities' relative contributions to the work that generates income;
- (e) The location where work is performed; and
- (f) Other relevant factors.

(3) This section applies only to the following transactions or arrangements:

(a) Arrangements that are, in form, a joint venture or similar arrangement between a construction contractor and the owner or developer of a construction project but that are, in substance, substantially guaranteed payments for the purchase of construction services characterized by a failure of the parties' agreement to provide for the contractor to share substantial profits and bear significant risk of loss in the venture;

(b) Arrangements through which a taxpayer attempts to avoid tax under chapter 82.04 RCW by disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer from business activities that would be taxable in Washington by moving that income to another entity that would not be taxable in Washington; and

(c) Arrangements through which a taxpayer attempts to avoid tax under chapter 82.08 or 82.12 RCW by engaging in a transaction to disguise its purchase or use of tangible personal property by vesting legal title or other ownership interest in another entity over which the taxpayer exercises control in such a manner as to effectively retain control of the tangible personal property.

(4) In determining whether a transaction or arrangement comes within the scope of subsection (3) of this section, the department is not required to prove a taxpayer's subjective intent in engaging in the transaction or arrangement.

(5) The department must adopt rules to assist in determining whether a transaction or arrangement is within the scope of subsection (3) of this section. The adoption of a rule as required under this subsection is not a condition precedent for the department's exercise of the authority provided in this section. Any rules adopted under this section must include examples of transactions that the department will disregard for tax purposes.

(6) This section does not affect the department's authority to apply any other remedies available under statutory or common law.

(7) For purposes of this section, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

**NEW SECTION. Sec. 202.** A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) The department may not use section 201 of this act to disregard any transaction or arrangement initiated before the effective date of this section, if, in respect to such transaction or arrangement, the taxpayer had reported its tax liability in conformance with either specific written instructions provided by the department to the taxpayer, a determination published under the authority of RCW 82.32.410, or other document made available by the department to the general public.

(b) This section does not apply if the transaction or arrangement engaged in by the taxpayer differs materially from the transaction or arrangement that was addressed in the specific written instructions, published determination, or other document made available by the department to the general public.

(2) Section 201 of this act does not apply to any tax periods ending before May 1, 2010, that were included in a completed field audit conducted by the department.

(3) For purposes of this section, "specific written instructions" means tax reporting instructions provided to a taxpayer and which specifically identify the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

**Sec. 203.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there ~~((shall be))~~ is assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there ~~((shall be))~~ is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there ~~((shall be))~~ is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there ~~((shall be))~~ is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there ~~((shall be))~~ is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there ~~((shall be))~~ is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added ~~((shall))~~ may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant ~~((be))~~ is issued by the department of revenue for the collection of taxes, increases, and penalties, there ~~((shall be))~~ is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department ~~((shall))~~ must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department ~~((shall))~~ may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department ~~((shall))~~ must add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department ~~((of revenue))~~ has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department ~~((shall))~~ may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions ~~((shall))~~ apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department ~~((of revenue shall))~~ must be clearly identified as such and ~~((shall))~~ must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in section 201(3) of this act, the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under section 201(2) of this act. The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under section 201(3) of this act, the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due ~~((shall))~~ must be added.

~~((7))~~ (8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

~~((8))~~ (9) The department ~~((of revenue))~~ may not impose ~~((both))~~ the evasion penalty ~~((and))~~ in combination with the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

~~((9))~~ (10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department ~~((of revenue))~~, and that has a statutorily defined due date.

**NEW SECTION. Sec. 204.** A new section is added to chapter 82.32 RCW to read as follows:

There is hereby created a joint tax avoidance review committee which is a bipartisan committee consisting of three members of the senate, two from the majority caucus and one from the minority caucus, and three members of the house of representatives, two from the majority caucus and one from the minority caucus. The senate members of the committee must be appointed by the majority leader of the senate, and the house members of the committee must be appointed by the speaker of the house. The appointing authorities must also appoint one alternate member from each of the two largest caucuses of each legislative chamber.

(1)(a) Members and alternates must be appointed as soon as possible after the effective date of this section, and their terms continue until such persons no longer wish to serve on the committee or no longer serve in the legislature, whichever occurs first.

(b) A vacancy must be filled by the appointment of a legislator from the same legislative chamber and caucus as the original appointment. The appropriate appointing authority must make the appointment within thirty days of the vacancy occurring. Former committee members and alternates may be reappointed to the committee.

(2) The committee must choose its chair and vice-chair from among its membership. The committee meets at the call of the chair. The chair of the committee must cause all meeting notices and committee documents to be sent to the committee members and alternates.

(3) Staff support for the committee must be provided by the senate committee services and the house of representatives office of program research.

(4) The committee must:

(a) Generally monitor the department's implementation of Part II of this act, providing timely advice to the department in any rule making undertaken pursuant to the authority granted under section 201 of this act;

(b) Seek input from stakeholders and other legislators as the committee may determine is desirable and useful in the furtherance of its mission herein described;

(c) Review other cases, identified by the department, of tax avoidance transactions not described in section 201 of this act that may represent examples of arrangements that circumvent the policies of this state and thus unfairly avoid taxes;

(d) Consider the need for an explicit statutory construction standard to provide direction to the courts on the interpretation of Part II of this act; and

(e) Provide a report to the fiscal committees of the house of representatives and senate by December 31, 2010, which must include:

(i) Recommended legislation on any matters that the committee deems advisable, including amendments to sections 201, 202, and 203 of this act; and

(ii) Recommendations for future legislative oversight of the department's implementation of sections 201, 202, and 203 of this act.

(5) For the purposes of this section, the disclosure of otherwise confidential tax information to the members of the committee is deemed to fall within the exception provided by RCW 82.32.330(3)(d).

(6) This section expires July 1, 2011.

**NEW SECTION. Sec. 205.** (1) The legislature finds that this state's tax policy with respect to the taxation of transactions between affiliated entities and the income derived from such transactions (intercompany transactions) has motivated some taxpayers to engage in transactions designed solely or primarily to minimize the tax effects of intercompany transactions. The legislature further finds that some intercompany transactions result from taxpayers that are required to establish affiliated entities to comply with regulatory mandates and that transactions between such affiliates effectively increases the tax burden in this state on the affiliated group of entities.

(2) Therefore, as existing resources allow, the department of revenue is directed to conduct a review of the state's tax policy with respect to the taxation of intercompany transactions. The review must include the impacts of such transactions under the state's business and occupation tax and state and local sales and use taxes. The department may include other taxes in the review as it deems appropriate.

(3) In conducting the review, the department must examine how this state's tax policy compares to the tax policy of other states with respect to the taxation of intercompany transactions. The department's review must include an analysis of potential alternatives to the current policy of taxing intercompany transactions, including their estimated revenue impacts if practicable.

(4) In conducting this review, the department may seek input from members of the business community and others as it deems appropriate.

(5) The department must report its findings to the fiscal committees of the house of representatives and senate by December 1, 2010. However, if the department has not completed its review by December 1, 2010, the department must provide the fiscal committees of the legislature with a brief status report by December 1, 2010, and the final report by December 1, 2011.

**Sec. 206.** RCW 82.12.020 and 2009 c 535 s 305 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) 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)))~~ the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products 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) 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;

(c) 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) 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), or (6)(b), if the sale to, or the use 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.

(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 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;

(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;

(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; 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.

(4)(a) Except as provided in (b) of this subsection (4), the tax 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.

(b) In the case of a seller required to collect use tax from the purchaser, the tax 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.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010.

**Sec. 207.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are each reenacted and amended to read as follows:

(1) As used in this chapter, the term "sale" (~~((shall have))~~ has its ordinary meaning and (~~((shall))~~ includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a twelve-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert (~~((shall))~~ must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department (~~((of revenue shall))~~ must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department (~~((shall))~~ must consider the following:

~~((a))~~ (i) Persons (~~((shall))~~ must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

~~((b))~~ (ii) When persons are not commonly owned or controlled, they (~~((shall))~~ must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions (~~((shall be))~~ are considered separate acquisitions.

(3) The term "sale" (~~((shall))~~ does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(f) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(j) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(k) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(o) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner (~~(- PROVIDED, That)~~), However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than ((4)) (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, ((2)) (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or ((3)) (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes ((shall)) become due and payable on the original transfer as otherwise provided by law.

(p)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of ((section)) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (p)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (p)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(p)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(p)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(q) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

**Sec. 208.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended to read as follows:

(1) As used in this chapter, the term "controlling interest" has the following meaning:

((4)) (a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

((2)) (b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

(2) The department may, at the department's option, enforce the obligation of the seller under this chapter as provided in this subsection (2):

(a) In the transfer or acquisition of a controlling interest as defined in subsection (1)(a) of this section, either against the corporation in which a controlling interest is transferred or acquired, against the person or persons who acquired the controlling interest in the corporation or, when the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and

(b) In the transfer or acquisition of a controlling interest as defined in subsection (1)(b) of this section, either against the entity in which a controlling interest is transferred or acquired or against the person or persons who transferred or acquired the controlling interest in the entity.

**Sec. 209.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each amended to read as follows:

The tax (~~(herein)~~) provided for in this chapter and any interest or penalties thereon (~~(shall be)~~) is a specific lien upon each ((piece)) parcel of real property located in this state that is either sold or that is owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax ((shall have been)) is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

**Sec. 210.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to read as follows:

(1) The tax levied under this chapter ((shall be)) is the obligation of the seller and the department ((of revenue)) may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages ((and resort to)). The department's use of one course of enforcement ((shall)) is not ((be)) an election not to pursue the other.

(2) For purposes of this section and notwithstanding any other provisions of law, the seller is the parent corporation of a wholly owned subsidiary, when such subsidiary is the transferor to a third- party transferee and the subsidiary is dissolved before paying the tax imposed under this chapter.

**Sec. 211.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to read as follows:

(1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter (~~(shall)) will~~ bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, (~~(shall be)) is~~ computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, ~~((shall be))~~ is computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed ~~((shall))~~ must be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department ~~((of revenue shall))~~ must provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there ~~((shall be))~~ is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there ~~((shall))~~ will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there ~~((shall))~~ will be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection ~~((shall be))~~ is collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee ~~((shall be))~~ is personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless~~((:~~  
~~(a))~~ an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located~~((:~~  
~~(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale).~~

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department ~~((shall))~~ must assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department ~~((shall))~~ must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same ~~((shall))~~ becomes due and ~~((shall))~~ must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

- (a) Fraud or misrepresentation of a material fact by the taxpayer;
- (b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or
- (c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through ~~((7))~~ (8) ~~((shall))~~ must be deposited in the housing trust fund as described in chapter 43.185 RCW.

**Sec. 212.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to read as follows:

(1) An organization that fails to report a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer, ~~((shall be))~~ is subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090~~((6))~~ (7).

(2) Subsection (1) of this section also applies to the failure to report to the secretary of state the granting of an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).

**Sec. 213.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to read as follows:

(1) ~~(a)~~ The secretary of state ~~((shall))~~ must adopt rules requiring any entity that is required to file an annual report with the secretary of state, including entities under Titles 23, 23B, 24, and 25 RCW, to disclose: ~~(i) Any transfer ~~((of))~~ of the controlling interest ~~((of))~~ in the entity ~~((and any interest in real property))~~; and ~~(ii) the granting of any option to acquire an interest in the entity if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).~~~~

~~(b) The disclosure requirement in this subsection only applies to entities owning an interest in real property located in this state.~~

(2) This information ~~((shall))~~ must be made available to the department of revenue upon request for the purposes of tracking the transfer of the controlling interest in entities owning real property and to determine when the real estate excise tax is applicable in such cases.

(3) For the purposes of this section, "controlling interest" has the same meaning as provided in RCW 82.45.033.

### PART III

#### Modifying the First Mortgage Deduction

**Sec. 301.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, ~~((amounts derived from))~~ interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(2) Interest deductible under this section includes the portion of fees charged to borrowers, including points and loan origination fees, that is recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles.

(3) Subsections (1) and (2) of this section notwithstanding, the following is a nonexclusive list of items that are not deductible under this section:

- (a) Fees for specific services such as: Document preparation fees; finder fees; brokerage fees; title examination fees; fees for credit checks; notary fees; loan application fees; interest lock-in fees if the loan is not made; servicing fees; and similar fees or amounts;
- (b) Fees received in consideration for an agreement to make funds available for a specific period of time at specified terms, commonly referred to as commitment fees;
- (c) Any other fees, or portion of a fee, that is not recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles;
- (d) Gains on the sale of valuable rights such as service release premiums, which are amounts received when servicing rights are sold; and
- (e) Gains on the sale of loans, except deferred loan origination fees and points deductible under subsection (2) of this section, are not to be considered part of the proceeds of sale of the loan.

(4) Notwithstanding subsection (3) of this section, in computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security, or other financial businesses, amounts received for servicing loans primarily secured by first

mortgages or trust deeds on nontransient residential properties, including such loans that secure mortgage-backed or mortgage-related securities, but only if:

(a)(i) The loans were originated by the person claiming a deduction under this subsection (4) and that person either sold the loans on the secondary market or securitized the loans and sold the securities on the secondary market; or

(ii)(A) The person claiming a deduction under this subsection (4) acquired the loans from the person that originated the loans through a merger or acquisition of substantially all of the assets of the person who originated the loans, or the person claiming a deduction under this subsection (4) is affiliated with the person that originated the loans. For purposes of this subsection, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise; and

(B) Either the person who originated the loans or the person claiming a deduction under this subsection (4) sold the loans on the secondary market or securitized the loans and sold the securities on the secondary market; and

(b) The amounts received for servicing the loans are determined by a percentage of the interest paid by the borrower and are only received if the borrower makes interest payments.

#### PART IV

##### Direct Seller Business and Occupation Tax Exemption

**NEW SECTION. Sec. 401.** (1) A business and occupation tax exemption is provided in RCW 82.04.423 for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative. The intent of the legislature in enacting this exemption was to provide a narrow exemption for out-of-state businesses engaged in direct sales of consumer products, typically accomplished through in-home parties or door-to-door selling.

(2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2 (September 10, 2009), the Washington supreme court held that the exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products through its representative in addition to consumer products; and (b) whose consumer products were ultimately sold at retail in permanent retail establishments.

(3) The legislature finds that most out-of-state businesses selling consumer products in this state will either be eligible for the exemption under RCW 82.04.423 or could easily restructure their business operations to qualify for the exemption. As a result, the legislature expects that the broadened interpretation of the direct sellers' exemption will lead to large and devastating revenue losses. This comes at a time when the state's existing budget is facing a two billion six hundred million dollar shortfall, which could grow, while at the same time the demand for state and state-funded services is also growing. Moreover, the legislature further finds that RCW 82.04.423 provides preferential tax treatment for out-of-state businesses over their in-state competitors and now creates a strong incentive for in-state businesses to move their operations outside Washington.

(4) Therefore, the legislature finds that it is necessary to reaffirm the legislature's intent in establishing the direct sellers' exemption and prevent the loss of revenues resulting from the expanded interpretation of the exemption by amending RCW 82.04.423 retroactively to conform the exemption to the original intent of the legislature and by prospectively ending the direct sellers' exemption as of the effective date of this section.

**Sec. 402.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each amended to read as follows:

(1) Prior to the effective date of this section, this chapter (~~shall~~) does not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

- (a) Does not own or lease real property within this state; and
- (b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and
- (c) Is not a corporation incorporated under the laws of this state; and
- (d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys only consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells at retail, or solicits the sale at retail of, only consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section (~~shall~~) may be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to (~~the enactment of this section~~) August 23, 1983.

#### PART V

##### Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

**NEW SECTION. Sec. 501.** (1)(a) In 1967, the legislature amended RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a preferential business and occupation tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The legislature finds that RCW 82.04.260(4) was interpreted by the state supreme court on January 13, 2005, in *Agrilink Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The supreme court held that the preferential business and occupation tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable finished products, such as canned food.

(b) The legislature intends to narrow the exemption provided for slaughtering, breaking, and/or processing perishable meat products and/or selling such products at wholesale by requiring that the end product be a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product.

(2)(a) A business and occupation tax exemption is provided for (i) manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and (ii) selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. This exemption expires July 1, 2012, and is replaced by a preferential business and occupation tax rate.



(b) The legislature finds that the rationale of the *AgriLink* decision, if applied to these tax preferences, could result in preferential tax treatment for any processed food product that contained any fresh fruit or vegetable as an ingredient, however small the amount.

(c) The legislature intends to narrow the tax preference provided to fruit and vegetable manufacturers by requiring that the end product be comprised either (i) exclusively of fruits and/or vegetables, or (ii) of any combination of fruits, vegetables, and certain other substances that, cumulatively, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

**NEW SECTION. Sec. 502.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Perishable meat products, by slaughtering, breaking, or processing, if the finished product is a perishable meat product; as to such persons the tax imposed is equal to the value of the perishable meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;

(b) Meat products, by dehydration, curing, smoking, or any combination of these activities, if the finished meat products are not canned; as to such persons the tax imposed is equal to the value of the meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;

(c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured in a rendering plant licensed under chapter 16.68 RCW; as to such persons the tax imposed is equal to the value of the products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of selling at wholesale:

(a) Perishable meat products; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;

(b) Meat products that have been manufactured by the seller by dehydration, curing, smoking, or any combination of such activities, if the finished meat products are not canned; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;

(c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured by the seller in a rendering plant; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Animal" means all members of the animal kingdom except humans, fish, and insects.

(b) "Carcass" means all or any parts, including viscera, of a slaughtered animal.

(c) "Fish" means any water-breathing animal, including shellfish.

(d) "Hide" means any unprocessed animal pelt or skin.

(e)(i) "Meat products" means:

(A) Products comprised exclusively of animal carcass; and

(B) Products, such as jerky, sausage, and other cured meat products, that are comprised primarily of animal carcass by weight or volume and may also contain water; nitrates; nitrites; acids; binders and extenders; natural or synthetic casings; colorings; flavorings such as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and vinegar; and similar substances.

(ii) Except as provided in (e)(i) of this subsection (3), "meat products" does not include products containing any cereal grains or cereal-grain products, dairy products, legumes and legume products, fruit or vegetable products as defined in RCW 82.04.260, and similar ingredients, unless the ingredient is used as a flavoring. For purposes of this subsection, "flavoring" means a substance that contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or any other edible substance of plant origin, whose primary function in food is flavoring or seasoning rather than nutritional, and which may legally appear as "natural flavor," "flavor," or "flavorings" in the ingredient statement on the label of the meat product.

(iii) "Meat products" includes only products that are intended for human consumption as food or animal consumption as feed.

(f) "Perishable" means having a high risk of spoilage within thirty days of manufacture without any refrigeration or freezing.

(g) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other by-product whatsoever.

**Sec. 503.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to read as follows:

(1) This chapter (~~shall~~) ~~does~~ not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables;

or

(b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2)(a) "Fruit or vegetable products" means:

(i) Products comprised exclusively of fruits, vegetables, or both; and

(ii) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

(b) "Fruit or vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed.

(3) This section expires July 1, 2012.

**Sec. 504.** RCW 82.04.4266 and 2010 c 114 (SHB 3066) s 111 are each amended to read as follows:

(1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables;

or

(b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A

person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2)(a) "Fruit or vegetable products" means:

(i) Products comprised exclusively of fruits, vegetables, or both; and

(ii) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

(b) "Fruit or vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.--- (section 102, chapter July 1, 2012, (SHB 3066), Laws of 2010).

~~((3))~~ (4) This section expires July 1, 2012.

**Sec. 505.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and 2009 c 162 s 34 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business (~~(shall be)~~ is) equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~(shall be)~~ is) equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed (~~(shall be)~~ is) equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

~~(d)~~ (i) Beginning July 1, 2012, fruit(s) or vegetable(s) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruit(s) or vegetable(s) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~(shall be)~~ is) equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(ii) For purposes of this subsection, "fruit or vegetable products" means:

(A) Products comprised exclusively of fruits, vegetables, or both; or

(B) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume;

(iii) "Fruit and vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business (~~(shall be)~~ is) equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business (~~(shall be)~~ is) equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business (~~(shall be)~~ is) equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities (~~(shall be)~~ is) equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~(4) (Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.~~

~~(5))~~ Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities (~~(shall be)~~ is) equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((6))~~ (5) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities (~~(shall be)~~ is) equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((7))~~ (6) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business (~~(shall be)~~ is) equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection (~~(shall be)~~ are) exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or

barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

~~((8))~~ (7)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business ~~((shall be))~~ is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state ~~((shall))~~ must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

~~((9))~~ (8) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities ~~((shall be))~~ is equal to the gross income of such business multiplied by the rate of 0.484 percent.

~~((10))~~ (9) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities ~~((shall be))~~ is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

~~((11))~~ (10)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through ~~((the later of))~~ June 30, 2007; and
- (ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection ~~((11))~~ (10) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection ~~((11))~~ (10), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection ~~((11))~~ (10) must report as required under RCW 82.32.545.

(e) This subsection ~~((11))~~ (10) does not apply on and after July 1, 2024.

~~((12))~~ (11)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business ~~((shall))~~, in the case of extractors, ~~((be))~~ is equal to the value of products, including by-products, extracted, or in the case of extractors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of products, including by-products, manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection ~~((12))~~ (11)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection ~~((42))~~ ~~(11)~~(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

~~((43))~~ ~~(12)~~ Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities ~~((shall be))~~ is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~((44))~~ ~~(13)~~ Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

**Sec. 506.** RCW 82.04.260 and 2010 c 114 (SHB 3066) s 107 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

~~(d)~~(i) Beginning July 1, 2012, fruit(s) or vegetable(s) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruit(s) or vegetable(s) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(ii) For purposes of this subsection, "fruit or vegetable products" means:

(A) Products comprised exclusively of fruits, vegetables, or both; or

(B) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume;

(iii) "Fruit and vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~(4) ((Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.~~

~~—(5))~~ Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((6))~~ ~~(5)~~ Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((7))~~ ~~(6)~~ Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal

to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

~~((8))~~ (7)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

~~((9))~~ (8) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

~~((10))~~ (9) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

~~((11))~~ (10)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

- (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- (ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection ~~((11))~~ (10) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection ~~((11))~~ (10), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection ~~((11))~~ (10) must file a complete annual report with the department under RCW 82.32.-- (section 103, chapter 114 (SHB 3066), Laws of 2010).

(e) This subsection ~~((11))~~ (10) does not apply on and after July 1, 2024.

~~((12))~~ (11)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection ~~((12))~~ (11)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers

including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection ~~((42))~~ (11)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection ~~((42))~~ (11) must file a complete annual survey with the department under RCW 82.32.--- (section 102, chapter 114 (SHB 3066), Laws of 2010).

~~((43))~~ (12) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~((44))~~ (13)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection ~~((44))~~ (13) must file a complete annual report with the department under RCW 82.32.--- (section 103, chapter 114 (SHB 3066), Laws of 2010).

**Sec. 507.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260~~((44))~~ (10) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

**Sec. 508.** RCW 82.04.250 and 2010 1st sp.s. c 11 (SSB 6712) s 1 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, 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.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260~~((44))~~ (10) or subsection (3) of this section, 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 0.484 percent.

(3) Until July 1, 2024, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, 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 .2904 percent.

**Sec. 509.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260~~((44))~~ (10), as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

**Sec. 510.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are each reenacted and amended to read as follows:

(1) In addition to the taxes imposed under RCW 82.04.260~~((42))~~ (11), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260~~((42))~~ (11). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260~~((42))~~ (11) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section ~~((shall))~~ must be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section ~~((shall be))~~ is suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) (~~shall~~) takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge (~~shall be~~) is imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) (~~shall~~) takes effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge (~~shall be~~) is imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department (~~shall~~) must adjust the surcharge in accordance with this subsection.

(b) The department (~~shall~~) must adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge (~~shall~~) takes effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge (~~shall be~~) is imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and (~~shall~~) may not be used to challenge the validity of the surcharge imposed under this section.

(f) The department (~~shall~~) must provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management (~~shall~~) must make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities.

**Sec. 511.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read as follows:

(1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~) section 502 of this act, to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~) section 502 of this act, to customer-owners of the grocery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale, within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.

(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise.

**Sec. 512.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read as follows:

This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260(~~(42))~~ (11) apply to this section.

**Sec. 513.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are each reenacted and amended to read as follows:

(1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, (~~shall be~~) is taxable under each provision applicable to those activities.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1)(~~b~~), (c), (~~(42))~~ or (d), (10), or (11), or (~~(42))~~ section 502(2) of this act with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, (~~shall be~~) are allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit (~~shall~~) may not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or ~~((42))~~ (11), including those persons who are also taxable under RCW 82.04.261, ~~((shall be))~~ are allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit ~~((shall))~~ may not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), ~~((4))~~ (10), or ~~((11))~~ section 502(1) of this act, including those persons who are also taxable under RCW 82.04.261, with respect to extracting or manufacturing products in this state ~~((shall be))~~ are allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit ~~((shall))~~ may not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404, 82.04.2909(1), 82.04.260 (1), (2), ~~((4))~~ (10), and ~~((11))~~ section 502(1) of this act, and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as a manufacturer; and (iii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260~~((42))~~ (11); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

**Sec. 514.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260~~((44))~~ (10)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260~~((44))~~ (10)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW ~~((82.04.0250(3) [82.04.250(3)])~~ 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

~~((#))~~ (A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260~~((44))~~ (10) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

~~((#))~~ (B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

~~((#))~~ (C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260~~((44))~~ (10) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

~~((#))~~ (D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

~~((#))~~ (E) As used in ~~((#))~~ (b)(ii)(C) of this subsection (2)~~((b)(ii)(C))~~, "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.



(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024.

**Sec. 515.** RCW 82.04.4463 and 2010 c 114 (SHB 3066) s 116 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(~~((44))~~) (10)(b), or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(~~((44))~~) (10)(b), or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(~~((44))~~) (10)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(~~((44))~~) (10)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

(A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(~~((44))~~) (10) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

(B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

(C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(~~((44))~~) (10) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

(D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

(E) As used in (b)(ii)(C) of this subsection (2)(~~((b)(ii))~~), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual report with the department under RCW 82.32.--- (section 103, chapter 114 (SHB 3066), Laws of 2010).

(6) This section expires July 1, 2024.

**Sec. 516.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller (~~(shall)~~) must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260~~((14))~~ (13) or 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use ~~((shall))~~ must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes.

**Sec. 517.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to read as follows:

~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.~~

~~—(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.~~

~~—(c)(i) The rate in RCW 82.04.260(14)(a)(ii) takes effect July 1, 2007.~~

~~—(ii) If on December 31, 2007, final assembly of a superefficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.~~

~~—(2) The definitions in this subsection apply throughout this section.~~

~~—(a)) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.~~

~~((b))~~ (2) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

~~((c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.~~

~~—(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty six superefficient airplanes a year.~~

~~—(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.~~

~~—(f))~~ (3) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market.

**Sec. 518.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read as follows:

A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260~~((12))~~ (11)(d).

**Sec. 519.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to read as follows:

Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax must allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines are those activities to which the tax rates in RCW 82.04.260~~((14))~~ (13) and 82.04.280(1) apply.

**Sec. 520.** RCW 48.14.080 and 2009 c 535 s 1102 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))~~ are 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; (iv) services, including digital automated services as defined in RCW 82.04.192; and (v) digital goods and digital codes as those terms are defined in RCW 82.04.192; and

(c) The tax imposed in RCW 82.04.260~~((14))~~ (9), 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.

## PART VI

### Suspending the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

**Sec. 601.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. 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.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) The exemption under this section does not apply to sales made from the effective date of this section through June 30, 2013.

**Sec. 602.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The definitions in RCW 82.08.890 apply to this section.

(4) The exemption under this section does not apply to the use of tangible personal property and services if first use of the property or services in this state occurs from the effective date of this section through June 30, 2013.

## PART VII

### Ending the Preferential Business and Occupation Tax Treatment Received by Directors of Corporations

**NEW SECTION. Sec. 701.** (1) In adopting the state's business and occupation tax, the legislature intended to tax virtually all business activities carried on within the state. See *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that the business and occupation tax applies to all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, unless a specific exemption applies.

(2) One of the major business and occupation tax exemptions is provided in RCW 82.04.360 for income earned as an employee or servant as distinguished from income earned as an independent contractor. The legislature's intent in providing this exemption was to exempt employee wages from the business and occupation tax but not to exempt income earned as an independent contractor.

(3) The legislature finds that corporate directors are not employees or servants of the corporation whose board they serve on and therefore are not entitled to a business and occupation tax exemption under RCW 82.04.360. The legislature further finds that there are no business and occupation tax exemptions for compensation received for serving as a member of a corporation's board of directors.

(4) The legislature also finds that there is a widespread misunderstanding among corporate directors that the business and occupation tax does not apply to the compensation they receive for serving as a director of a corporation. It is the legislature's expectation that the department of revenue will take appropriate measures to ensure that corporate directors understand and comply with their business and occupation tax obligations with respect to their director compensation. However, because of the widespread misunderstanding by corporate directors of their liability for business and occupation tax on director compensation, the legislature finds that it is appropriate in this unique situation to provide limited relief against the retroactive assessment of business and occupation taxes on corporate director compensation.

(5) The legislature also reaffirms its intent that all income of all independent contractors is subject to business and occupation tax unless specifically exempt under the Constitution or laws of this state or the United States.

**Sec. 702.** RCW 82.04.360 and 2010 c 106 (E2SHB 1597) s 207 are each amended to read as follows:

(1) This chapter does not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee ~~((shall))~~ includes those persons that are defined in section 3121(d)(3)(B) of the federal internal revenue code of 1986, as amended through January 1, 1991.

(2) Until the effective date of this section, this chapter does not apply to amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors. Beginning on the effective date of this section, such amounts are taxable under RCW 82.04.290(2).

(3) A booth renter is an independent contractor for purposes of this chapter. For purposes of this ~~((sub))~~section, "booth renter" means any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

#### PART VIII Tax Debts

**Sec. 801.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to read as follows:

~~(1) ((Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.~~

~~— For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.~~

~~— (2) The officer, member or manager, or other person shall be liable only for taxes collected which)) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid retail sales tax funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid sales taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.~~

~~(2) Personal liability under this section may be imposed for state and local sales taxes.~~

~~(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid sales tax liability of the limited liability business entity.~~

~~(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the sales taxes due from the limited liability business entity.~~

~~(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for sales tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's sales taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for sales tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.~~

~~(b) All other responsible individuals are liable under this section only for sales tax liability that became due during the period he or she had the ~~((control, supervision,))~~ responsibility~~((;))~~ or duty to ~~((act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.~~~~

~~— (3)) remit payment of the limited liability business entity's taxes to the department.~~

~~(5) Persons ~~((liable under))~~ described in subsection ~~((4))~~ (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the ~~((retail sales tax funds held in trust))~~ limited liability business entity's sales taxes is due to reasons beyond their control as determined by the department by rule.~~

~~((4))~~ (6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

~~((5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.~~

~~(6)) (7)~~ This section does not relieve the (~~(corporation or)~~ limited liability (~~(company)~~ business entity of (~~(other tax liabilities)~~ its sales tax liability or otherwise impair other tax collection remedies afforded by law.

~~((7)) (8)~~ Collection authority and procedures prescribed in this chapter apply to collections under this section.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.005.

(e) "Member" has the same meaning as in RCW 25.15.005, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice-president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid sales tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

## PART IX

### Repealing the Sales and Use Tax Exemptions for Bottled Water and Candy

**Sec. 901.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 (~~(shall)~~ does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) Until July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section (~~(shall)~~ does not apply to prepared food, soft drinks, bottled water, candy, or dietary supplements. Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

- (B) A mineral;
- (C) An herb or other botanical;
- (D) An amino acid;
- (E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
- (F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(e) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

(f) "Bottled water" means water that is placed in a sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((shall apply))~~ applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under ~~((Title))~~ 42 U.S.C. Sec. 1485 ~~((of the federal internal revenue code))~~; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**Sec. 902.** RCW 82.08.0293 and 2010 c 106 (E2SHB 1597) s 216 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) ~~Until July 1, 2013,~~ the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, candy, or dietary supplements. ~~Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements.~~ For purposes of this subsection, the following definitions apply:

(a) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

- (A) A vitamin;
- (B) A mineral;
- (C) An herb or other botanical;
- (D) An amino acid;
- (E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
- (F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(b)(i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(d) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

(e) "Bottled water" means water that is placed in a sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485 ~~((of the federal internal revenue code))~~; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**Sec. 903.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to read as follows:

(1) The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) Until July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section ~~((shall))~~ does not apply to prepared food, soft drinks, bottled water, candy, or dietary supplements. Beginning July 1, 2013, the exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, candy, or dietary supplements. "Prepared food," "soft drinks," ~~((and))~~ "dietary supplements," "candy," and "bottled water" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((shall))~~ apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

**NEW SECTION. Sec. 904.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water for human use dispensed or to be dispensed to patients, pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or other medical condition. For purposes of this section, "prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(2) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(3) The provisions of RCW 82.32.060 apply to refunds authorized under this section.

(4) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide 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. 905.** 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 bottled water for human use dispensed or to be dispensed to patients, pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition. "Prescription" has the same meaning as in section 904 of this act.

**NEW SECTION. Sec. 906.** A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water for human use to persons who do not otherwise have a readily available source of potable water.

(2) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(3) The provisions of RCW 82.32.060 apply to refunds authorized under this section.

(4)(a) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide 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.

(b) The department may waive the requirement for an exemption certificate in the event of disaster or similar circumstance.

**NEW SECTION. Sec. 907.** 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 bottled water for human use by persons who do not otherwise have a readily available source of potable water.

**NEW SECTION. Sec. 908.** A new section is added to chapter 82.04 RCW to read as follows:

(1)(a) Subject to the requirements and limits in this section, candy manufacturers are entitled to a credit against the tax due under this chapter. The credit equals one thousand dollars for:

(i) Each full-time employment position that has been maintained in this state on a full-time basis for a continuous period of at least twelve consecutive months; or

(ii) Each full-time equivalent seasonal employee hired by a seasonal employer.

(b) Once a full-time employment position has been filled, the position does not cease to be maintained for a continuous period solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the twelve consecutive month period for which the position must be filled to earn a credit under this section; and

(ii) During any vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

(c) For full-time employment positions initially filled before July 1, 2010:

(i) The twelve consecutive month period for which the position must be filled to earn a credit under this section begins on the later of August 1, 2009, or the date that the employment position was initially filled; and

(ii) A second credit may be earned if the employment position is maintained on a full-time basis for an additional twelve consecutive month period.

(2)(a) The credit may only be claimed on a tax return filed electronically with the department using the department's online tax filing service, unless the department grants a waiver for good cause shown. For purposes of this subsection, "good cause" has the same meaning as in RCW 82.32.080(8)(a) (i), (ii), (iii), and (vi) and (b).

(b) Credit may be claimed only on tax returns originally due after July 31, 2010.

(c) The department must disallow any credit claimed on tax returns filed with the department after July 31, 2012.

(3)(a) Credits claimed may not exceed the tax otherwise due under this chapter on the manufacturing and retail or wholesale sale of candy manufactured by the taxpayer.

(b) No refunds may be granted for credits under this section.

(c) The credit provided in this section is in addition to any other credit that may be available to the candy manufacturer with respect to the same employment positions.

(4) No application is necessary for the credit. Candy manufacturers claiming the credit must keep records necessary for the department to verify eligibility under this section.

(5) A candy manufacturer claiming credit under this section must report to the department as provided in RCW 82.32.--- (section 103, chapter 114 (SHB 3066), Laws of 2010).

(6) The employment security department must provide to the department such information needed by the department to verify eligibility under this section.

(7) Pursuant to chapter 43.136 RCW, the citizen commission for performance measurement of tax preferences must schedule the credit under this section for a tax preference review by the joint legislative audit and review committee in 2011.

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

(a) "Candy" has the same meaning as in RCW 82.08.0293.



(b) "Candy manufacturer" means a person that manufactures candy. For purposes of this subsection "manufactures" has the same meaning as "to manufacture" in RCW 82.04.120.

(c) "Full-time" means a normal work week of at least thirty-five hours.

(d) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. "Seasonal basis" means a continuous employment period of less than twelve consecutive months.

(e) "Seasonal employer" means a person who regularly hires more than ten percent of its employees to work on a seasonal basis.

**NEW SECTION. Sec. 909.** If any provision of section 908 of this act or its application to any person or circumstance is held unconstitutional: (1) Section 908 of this act is considered invalid in its entirety; and (2) section 908 of this act and the application of any provision of that section to any person or circumstance is considered null and void and of no effect.

**NEW SECTION. Sec. 910.** A new section is added to chapter 82.32 RCW to read as follows:

(1) The department must compile a list of products meeting the definition of candy in RCW 82.08.0293 and products that are similar to candy but do not meet that definition. The list must identify each item as either subject to sales or use tax or not subject to sales or use tax. The list will be made in a form and manner prescribed by the department and must be made available on the department's internet web site. The list must also provide information about how to request a binding ruling from the department on the taxability of products not on the list.

(2) In compiling the list described in subsection (1) of this section, the department may:

(a) Evaluate the experiences of other member states of the streamlined sales and use tax agreement that impose retail sales tax on candy;

(b) Accept technical assistance from persons that sell, market, or distribute candy; and

(c) Consider any other resource the department finds useful in compiling the list.

(3) The creation of a list under subsection (1) of this section and any modifications to the list are not subject to the rule-making provisions of chapter 34.05 RCW.

(4) For products that are not identified on the list created by the department under subsection (1) of this section, taxpayers may request a binding written ruling from the department on the taxability of the product.

#### PART X

##### PUD Privilege Tax Clarification

**Sec. 1001.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to read as follows:

"Gross revenue" (~~shall~~) means the amount received from the sale of electric energy, which also includes any regularly recurring charge billed to consumers as a condition of receiving electric energy, and excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.

#### PART XI

##### Temporarily Increasing the Business and Occupation Tax on Service Businesses while Increasing the Small Business Credit for the Same Businesses

**NEW SECTION. Sec. 1101.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Beginning May 1, 2010, through June 30, 2013, an additional rate of tax of 0.30 percent is added to the rate provided for in RCW 82.04.255, 82.04.285, and 82.04.290(2)(a).

(2)(a) The additional rate in subsection (1) of this section does not apply to persons engaging within this state in business as a hospital. "Hospital" has the meaning provided in chapter 70.41 RCW but also includes any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW.

(b) The additional rate in subsection (1) of this section does not apply to amounts received from performing scientific research and development services including but not limited to research and development in the physical, engineering, and life sciences (such as agriculture, bacteriological, biotechnology, chemical, life sciences, and physical science research and development laboratories or services).

**Sec. 1102.** RCW 82.04.4451 and 1997 c 238 s 2 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. (~~The maximum credit for a taxpayer~~) Except for taxpayers that report at least fifty percent of their taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for a reporting period is thirty-five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045. For a taxpayer that reports at least fifty percent of its taxable amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting period is seventy dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection (~~shall~~) must be used by all taxpayers in taking the credit provided in this section.

**Sec. 1103.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than:

~~(i) Twenty-eight thousand dollars per year; or~~

(ii) Forty-six thousand six hundred and sixty-seven dollars per year for persons generating at least fifty percent of their taxable amount from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

## PART XII

### Property Management Salaries

**Sec. 1201.** RCW 82.04.394 and 1998 c 338 s 2 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Amounts received by a nonprofit property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW ~~((18.85.310))~~ 18.85.285; or

(b) Amounts received by a property management company from a housing authority for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW 18.85.285.

(2) ~~((As used in))~~ The definitions in this subsection apply to this section~~((s))~~.

(a) "On-site personnel" means a person who meets all of the following conditions: ~~((a))~~ (i) The person works primarily at the owner's property; ~~((b))~~ (ii) the person's duties include leasing property units, maintaining the property, collecting rents, or similar activities; and ~~((c))~~ (iii) under a written property management agreement: ~~((1))~~ (A) The person's compensation is the ultimate obligation of the property owner and not the property manager; ~~((2))~~ (B) the property manager is liable for payment only as agent of the owner; and ~~((3))~~ (C) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

(b) "Nonprofit property management company" means a property management company that is exempt from tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, as it exists on January 1, 2010.

(c) "Housing authority" means a city or county housing authority created pursuant to chapter 35.82 RCW.

**Sec. 1202.** RCW 82.04.394 and 2010 c 106 (E2SHB 1597) s 209 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Amounts received by a nonprofit property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW 18.85.285; or

(b) Amounts received by a property management company from a housing authority for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW 18.85.285.

(2) ~~((As used in))~~ The definitions in this subsection apply to this section~~((s))~~.

(a) "On-site personnel" means a person who meets all of the following conditions: ~~((a))~~ (i) The person works primarily at the owner's property; ~~((b))~~ (ii) the person's duties include leasing property units, maintaining the property, collecting rents, or similar activities; and ~~((c))~~ (iii) under a written property management agreement: ~~((1))~~ (A) The person's compensation is the ultimate obligation of the property owner and not the property manager; ~~((2))~~ (B) the property manager is liable for payment only as agent of the owner; and ~~((3))~~ (C) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

(b) "Nonprofit property management company" means a property management company that is exempt from tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, as it exists on January 1, 2010.

(c) "Housing authority" means a city or county housing authority created pursuant to chapter 35.82 RCW.

## PART XIII

### Temporarily Increasing Beer Taxes

**Sec. 1301.** RCW 66.24.290 and 2009 c 479 s 43 are each amended to read as follows:

(1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board. Any certificate of approval holder authorized to act as a distributor under RCW 66.24.270 shall pay the taxes imposed by this section.

(a) Every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons.

(b) Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages.

(c) The moneys collected under this subsection shall be distributed as follows: (i) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (ii) of the remaining moneys: (A) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (B) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(d) Any licensed retailer authorized to purchase beer from a certificate of approval holder with a direct shipment endorsement or a brewery or microbrewery shall make monthly reports to the liquor control board on beer purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the state general fund.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5)(a) From the effective date of this section through June 30, 2013, an additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to fifteen dollars and fifty cents per barrel of thirty-one gallons.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051 of the federal internal revenue code, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection shall be deposited in the state general fund.

(6) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

~~((6))~~ (7) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid.

#### PART XIV

##### Temporarily Imposing Taxes on Carbonated Beverages

NEW SECTION. Sec. 1401. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1)(a) "Carbonated beverage" means any packaged nonalcoholic liquid intended for human consumption that contains carbonation by natural or artificial means and any of the following substances: Caffeine, extracts, fruit juice or concentrated fruit juice, herbs, sweeteners, or syrup. "Packaged" includes cans, bottles, and other similar sealed containers. "Syrup" means a concentrated mixture in either liquid or powdered form that contains sugar or a sugar substitute and that is an ingredient used to make carbonated beverages.

(b) "Carbonated beverage" does not include carbonated bottled water. For the purpose of this subsection, "bottled water" has the same meaning as provided in section 901 of this act.

(2) "Ounce" means United States fluid ounce.

(3) "Previously taxed carbonated beverages" means carbonated beverages to which the tax under this chapter has been previously imposed.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. Sec. 1402. (1) From the effective date of this section through June 30, 2013, a tax is imposed on every person for the privilege of selling, at wholesale or retail, carbonated beverages in this state. The rate of the tax is equal to two cents per twelve ounces of carbonated beverages sold in this state.

(2)(a) In calculating the amount of tax due under this section, if the total amount of carbonated beverages sold in this state during the reporting period is not a whole number, the taxable quantity must be rounded as provided in (b) of this subsection.

(b) For a fraction of an ounce that is equal to or greater than one-half ounce, the taxable quantity must be rounded up to the nearest ounce. For a fraction of an ounce that is less than one-half ounce, the taxable quantity must be rounded down to the nearest ounce.

(3) Chapter 82.32 RCW applies to the tax imposed in this section. The tax reporting frequency for the tax imposed in this section must coincide with the taxpayer's reporting frequency for the tax imposed in chapter 82.04 RCW.

(4) The department may require taxpayers to report the taxable quantity of carbonated beverages in units of measure other than ounces.

(5) The tax imposed in this section is in addition to all other taxes imposed in this title on the same taxable event.

NEW SECTION. Sec. 1403. (1) The tax imposed in this chapter does not apply to any successive sale of previously taxed carbonated beverages.

(2) Any person claiming the exemption provided in this section must maintain documentation establishing that the carbonated beverages were previously taxed under this chapter. The documentation may be in the form of information on the invoice, or certification from the previous seller, stating: (a) That all or a specific stated portion of the carbonated beverages were previously subject to the tax imposed in this chapter; and (b) the amount of tax remitted or to be remitted to the department in respect of the carbonated beverages.

NEW SECTION. Sec. 1404. (1) For each calendar year, the tax imposed in this chapter does not apply in respect to the first ten million dollars of carbonated beverages sold in this state by any bottler as measured by the gross proceeds of sales of carbonated beverages at retail and wholesale by the bottler. If a bottler is affiliated with any other bottler or distributor, the ten million dollar threshold for the exemption in this subsection (1) is based on the combined gross proceeds of sales by all affiliated persons from all sales at wholesale and retail of carbonated beverages in this state during the calendar year.

(2) Successive sales by any person of carbonated beverages exempt under subsection (1) of this section are also exempt from the tax imposed in this chapter. Any person claiming the exemption provided in this subsection (2) must maintain documentation establishing that the carbonated beverages were previously sold in this state by a person exempt under subsection (1) of this section. The documentation may be in the form of information on the invoice, or certification from the previous seller, stating that the carbonated beverages were previously exempt under subsection (1) of this section.

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

(a) "Affiliated" has the same meaning as provided in section 110 of this act.

(b) "Bottler" means a person who bottles, cans, or otherwise packages carbonated beverages in beverage containers.

(c) "Distributor" means a person, other than a bottler, that makes sales at wholesale of carbonated beverages.

NEW SECTION. Sec. 1405. The tax imposed in this chapter does not apply to any activity or person that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

NEW SECTION. Sec. 1406. This part constitutes a new chapter in Title 82 RCW.

#### PART XV

##### Limiting the Bad Debt Deduction

NEW SECTION. Sec. 1501. The legislature intends with sections 1502 and 1503 of this act to supersede the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. Department of Revenue*, 123 Wn.2d 284 (1994).

**Sec. 1502.** RCW 82.08.037 and 2007 c 6 s 102 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; ~~((and))~~

(c) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and

(d) Repossessed property.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department ~~((shall))~~ must allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller.

**Sec. 1503.** RCW 82.12.037 and 2007 c 6 s 103 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for use taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; ~~((and))~~

(c) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and

(d) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department ~~((shall))~~ must allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller.

#### PART XVI

##### Data Centers

**Sec. 1601.** RCW 82.08.--- and 2010 1st sp.s. c 1 (ESSB 6789) s 2 are each amended to read as follows:

(1) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to charges made for labor and services rendered in respect to installing eligible server equipment. The exemption also applies to sales to qualifying businesses of eligible power infrastructure, including labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure.

(2)(a) In order to claim the exemption under this section, a qualifying business must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses. The department may assign a unique identification number to each exemption certificate issued under this section.

(b) A qualifying business claiming the exemption under this section must present 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)(a) ((A qualifying business must establish)) Within six years of the ((first day of the calendar quarter in which the business first receives an exemption under this section or section 3 of this act that it has)) date that the department issued an exemption certificate under this section to a

qualifying business with respect to an eligible computer data center, the qualifying business must establish that net employment at the eligible computer data center has increased ((employment in a computer data center)) by a minimum of:

(i) Thirty-five family wage ((jobs from the date the eligible computer data center first became operational)) employment positions; or  
(ii) Three family wage employment positions for each twenty thousand square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center. For qualifying businesses that lease space at an eligible computer data center, the number of family wage employment positions that must be increased under this subsection (3)(a)(ii) is based only on the space occupied by the lessee in the eligible computer data center.

(b) In calculating the net increase in family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase in family wage employment positions employed by qualifying businesses leasing space within the eligible computer data center from the owner; and

(B) The net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(ii)(A) Lessees of the owner of an eligible computer data center, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each lessee must be in proportion to the amount of space in the eligible computer data center occupied by the lessee compared to the total amount of space in the eligible computer data center occupied by all lessees that are qualifying businesses.

(c)(i) For purposes of this subsection, family wage ((jobs)) employment positions are new permanent employment positions requiring forty hours of weekly work, or their equivalent, on a full-time basis at the eligible computer data center and ((paying)) receiving a wage equivalent to or greater than one hundred fifty percent of the per capita personal income of the county in which the qualified project is located. ((The qualifying business must provide)) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage ((for employees)) provided by the employer of the employment position. For purposes of this subsection (3)(c), "new permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the owner or lessee of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the owner of the eligible computer data center and by employees of qualifying businesses leasing space from the owner of the eligible computer data center.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the requirements in (c)(i) of this subsection (3) are met.

((b)) (d) All previously exempted sales and use taxes are immediately due and payable for a qualifying business that does not meet the requirements of this subsection.

(4) A qualifying business claiming an exemption under this section or RCW 82.12.--- (section 3, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.) must complete an annual report with the department as required under section 103, chapter 114 (SHB 3066), Laws of 2010.

(5)(a) The exemption provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (5). For purposes of this subsection, "affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) If a person claims an exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this section until paid in full.

(6) For purposes of this section the following definitions apply unless the context clearly requires otherwise:

(a)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (a)(i)(A) through (C) of this subsection (6).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least one hundred thousand square feet.

(b) "Electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting web sites. The term also includes providing services such as e-mail, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

(c)(i) "Eligible computer data center" means a computer data center:

(A) Located in a rural county as defined in RCW 82.14.370;

(B) Having at least twenty thousand square feet dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers; and

(C) For which the commencement of construction occurs after March 31, 2010, and before July 1, 2011. For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or other improvements made to existing facilities, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of a computer data center.

(ii) With respect to facilities in existence on April 1, 2010 that are expanded, renovated, or otherwise improved after March 31, 2010, an eligible computer data center includes only the portion of the computer data center meeting the requirements in (c)(i)(B) of this subsection (6).

(d) "Eligible power infrastructure" means all fixtures and equipment necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes electrical substations, generators, wiring, and cogeneration equipment.

(e) "Eligible server equipment" means the original server equipment installed in an eligible computer data center on or after April 1, 2010, and replacement server equipment. For purposes of this subsection (6)(e), "replacement server equipment" means server equipment that: (i) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.--- (section 3, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.); and (ii) is installed and put into regular use before April 1, 2018.

(f) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner (~~or lessee~~) of an eligible computer data center or the lessee of at least twenty thousand square feet within an eligible computer data center dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(g) "Server" means blade or rack-mount server computers used in a computer data center exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Server" does not include personal computers.

(h) "Server equipment" means the server chassis and all computer hardware contained within the server chassis. "Server equipment" also includes computer software necessary to operate the server. "Server equipment" does not include the racks upon which the server chassis is installed, and computer peripherals such as keyboards, monitors, printers, mice, and other devices that work outside of the computer.

(7) This section expires April 1, 2018.

**Sec. 1602.** RCW 82.12.--- and 2010 1st sp.s. c 1 (ESSB 6789) s 3 are each amended to read as follows:

(1) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to the use of labor and services rendered in respect to installing such server equipment. The exemption also applies to the use of power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure.

(2) A qualifying business is not eligible for the exemption under this section unless the department issued an exemption certificate to the qualifying business for the exemption provided in RCW 82.08.---(section 2, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.).

(3)(a) The exemption provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (3). For purposes of this subsection, "affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) If a person has received the benefit of the exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this subsection (3)(b) until paid in full. A person is not required to repay taxes under this subsection with respect to property and services for which the person is required to repay taxes under RCW 82.08.---(section 2, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.).

(4) The definitions and requirements in RCW 82.08.--- (section 2, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.) apply to this section.

(5) This section expires April 1, 2018.

## PART XVII

### Miscellaneous Provisions

NEW SECTION. **Sec. 1701.** If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 104(1)(c) of this act unconstitutional or otherwise invalid, Part I of this act is null and void in its entirety.

NEW SECTION. **Sec. 1702.** Part I of this act applies with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after June 1, 2010. For purposes of calculating the thresholds in section 104(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

NEW SECTION. **Sec. 1703.** Except as provided in section 202 of this act, section 201 of this act applies to tax periods beginning January 1, 2006.

NEW SECTION. **Sec. 1704.** Sections 402 and 702 of this act apply both retroactively and prospectively.

NEW SECTION. **Sec. 1705.** In accordance with Article VIII, section 5 of the state Constitution, sections 702 and 1704 of this act do not authorize refunds of business and occupation tax validly collected before July 1, 2010, on amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors.

NEW SECTION. **Sec. 1706.** Section 402 of this act does not affect any final judgments, not subject to appeal, entered by a court of competent jurisdiction before the effective date of this section.

NEW SECTION. **Sec. 1707.** Except as provided in section 1701 of this act, 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. 1708. Except as otherwise provided in this act, 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 May 1, 2010.

NEW SECTION. Sec. 1709. Parts III and XIII and sections 101 through 106, 108 through 112, 501 through 503, 505, 507, 510 through 514, 516 through 519, 901, 903 through 911, and 1201 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 1, 2010.

NEW SECTION. Sec. 1710. Sections 106, 901, and 1201 of this act expire July 1, 2010.

NEW SECTION. Sec. 1711. Sections 503, 505, and 514 of this act expire June 10, 2010.

NEW SECTION. Sec. 1712. Sections 504, 506, and 515 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 10, 2010.

NEW SECTION. Sec. 1713. Parts VI, VII, and XIV and sections 107, 702, 902, and 1202 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2010.

NEW SECTION. Sec. 1714. Section 507 of this act expires July 13, 2010.

NEW SECTION. Sec. 1715. Section 508 of this act takes effect July 13, 2010.

NEW SECTION. Sec. 1716. Section 508 of this act expires July 1, 2011.

NEW SECTION. Sec. 1717. Section 509 of this act takes effect July 1, 2011.

NEW SECTION. Sec. 1718. Section 1001 of this act applies prospectively only.

NEW SECTION. Sec. 1719. Sections 1502 and 1503 of this act apply to claims for credit or refund filed with the department of revenue after June 30, 2010."

Correct the title.

Signed by Senators Prentice and Murray.

Signed by Representatives Hasegawa and Hunter.

There being no objection, the House adopted the conference committee report on SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6143 and advanced the bill, as recommended by the conference committee, to final passage.

**FINAL PASSAGE OF SENATE BILL AS RECOMMENDED BY CONFERENCE COMMITTEE**

Representative Hunter spoke in favor of the passage of the bill as recommended by the conference committee.

Representatives Orcutt, Klippert, Pearson and Ericksen spoke against the passage of the bill as recommended by the conference committee.

The Speaker (Representative Morris presiding) stated the question before the House to be final passage of Second Engrossed Substitute Senate Bill No. 6143, as recommended by the conference committee.

**ROLL CALL**

The Clerk called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 6143, as recommended by the conference committee, and the bill passed the House by the following votes: Yeas, 52; Nays, 44; Absent, 0; Excused, 2.

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

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Condotta, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Miloscia, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Santos, Schmick, Seaquist, Short, Simpson, Smith, Taylor, Walsh and Warnick.

Excused: Representatives Shea and Wood.

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6143, as recommended by the conference committee, having received the necessary constitutional majority, was declared passed.

**STATEMENT FOR THE JOURNAL**

I intended to vote NAY on Second Engrossed Substitute Senate Bill No. 6143.

Matthew Shea, 4th District

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 9:00 a.m., April 12, 2010, the 29th Day of the 1<sup>st</sup> Special Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

1690  
 Second Reading ..... 1  
 Amendment Offered ..... 1  
 Third Reading Final Passage ..... 2

6143-S  
 Committee Report Conference ..... 11  
 Final Passage ..... 36  
 Other Action ..... 35

8225  
 Second Reading ..... 1  
 Third Reading Final Passage ..... 1

HOUSE OF REPRESENTATIVES (Representative Morris presiding)  
 Statement for the Journal Representative Shea ..... 1, 2, 10, 36

Draft