

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6781

59th Legislature
2006 Regular Session

Passed by the Senate February 20, 2006
YEAS 48 NAYS 0

President of the Senate

Passed by the House March 6, 2006
YEAS 96 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6781** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6781

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Pflug, Fraser, Parlette, Shin and Schoesler)

READ FIRST TIME 02/17/06.

1 AN ACT Relating to environmental remediation; amending RCW
2 82.04.190; reenacting and amending RCW 82.04.050; adding a new section
3 to chapter 82.04 RCW; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101 are
6 each reenacted and amended to read as follows:

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

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

18 (b) Installs, repairs, cleans, alters, imprints, improves,
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

4 (c) Purchases for the purpose of consuming the property purchased
5 in producing for sale a new article of tangible personal property or
6 substance, of which such property becomes an ingredient or component or
7 is a chemical used in processing, when the primary purpose of such
8 chemical is to create a chemical reaction directly through contact with
9 an ingredient of a new article being produced for sale; or

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

15 (e) Purchases for the purpose of providing the property to
16 consumers as part of competitive telephone service, as defined in RCW
17 82.04.065. The term shall include every sale of tangible personal
18 property which is used or consumed or to be used or consumed in the
19 performance of any activity classified as a "sale at retail" or "retail
20 sale" even though such property is resold or utilized as provided in
21 (a), (b), (c), (d), or (e) of this subsection following such use. The
22 term also means every sale of tangible personal property to persons
23 engaged in any business which is taxable under RCW 82.04.280 (2) and
24 (7), 82.04.290, and 82.04.2908; or

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

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

33 (a) The installing, repairing, cleaning, altering, imprinting, or
34 improving of tangible personal property of or for consumers, including
35 charges made for the mere use of facilities in respect thereto, but
36 excluding charges made for the use of self-service laundry facilities,
37 and also excluding sales of laundry service to nonprofit health care

1 facilities, and excluding services rendered in respect to live animals,
2 birds and insects;

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

11 (c) The charge for labor and services rendered in respect to
12 constructing, repairing, or improving any structure upon, above, or
13 under any real property owned by an owner who conveys the property by
14 title, possession, or any other means to the person performing such
15 construction, repair, or improvement for the purpose of performing such
16 construction, repair, or improvement and the property is then
17 reconveyed by title, possession, or any other means to the original
18 owner;

19 (d) The sale of or charge made for labor and services rendered in
20 respect to the cleaning, fumigating, razing or moving of existing
21 buildings or structures, but shall not include the charge made for
22 janitorial services; and for purposes of this section the term
23 "janitorial services" shall mean those cleaning and caretaking services
24 ordinarily performed by commercial janitor service businesses
25 including, but not limited to, wall and window washing, floor cleaning
26 and waxing, and the cleaning in place of rugs, drapes and upholstery.
27 The term "janitorial services" does not include painting, papering,
28 repairing, furnace or septic tank cleaning, snow removal or
29 sandblasting;

30 (e) The sale of or charge made for labor and services rendered in
31 respect to automobile towing and similar automotive transportation
32 services, but not in respect to those required to report and pay taxes
33 under chapter 82.16 RCW;

34 (f) The sale of and charge made for the furnishing of lodging and
35 all other services by a hotel, rooming house, tourist court, motel,
36 trailer camp, and the granting of any similar license to use real
37 property, as distinguished from the renting or leasing of real
38 property, and it shall be presumed that the occupancy of real property

1 for a continuous period of one month or more constitutes a rental or
2 lease of real property and not a mere license to use or enjoy the same.
3 For the purposes of this subsection, it shall be presumed that the sale
4 of and charge made for the furnishing of lodging for a continuous
5 period of one month or more to a person is a rental or lease of real
6 property and not a mere license to enjoy the same;

7 (g) The sale of or charge made for tangible personal property,
8 labor and services to persons taxable under (a), (b), (c), (d), (e),
9 and (f) of this subsection when such sales or charges are for property,
10 labor and services which are used or consumed in whole or in part by
11 such persons in the performance of any activity defined as a "sale at
12 retail" or "retail sale" even though such property, labor and services
13 may be resold after such use or consumption. Nothing contained in this
14 subsection shall be construed to modify subsection (1) of this section
15 and nothing contained in subsection (1) of this section shall be
16 construed to modify this subsection.

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

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

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

26 (c) Credit bureau services;

27 (d) Automobile parking and storage garage services;

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

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

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

38 (4)(a) The term shall also include:

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

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

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

12 (5) The term shall also include the providing of telephone service,
13 as defined in RCW 82.04.065, to consumers.

14 (6) The term shall also include the sale of prewritten computer
15 software other than a sale to a person who presents a resale
16 certificate under RCW 82.04.470, regardless of the method of delivery
17 to the end user, but shall not include custom software or the
18 customization of prewritten computer software.

19 (7) The term shall also include the sale of or charge made for an
20 extended warranty to a consumer. For purposes of this subsection,
21 "extended warranty" means an agreement for a specified duration to
22 perform the replacement or repair of tangible personal property at no
23 additional charge or a reduced charge for tangible personal property,
24 labor, or both, or to provide indemnification for the replacement or
25 repair of tangible personal property, based on the occurrence of
26 specified events. The term "extended warranty" does not include an
27 agreement, otherwise meeting the definition of extended warranty in
28 this subsection, if no separate charge is made for the agreement and
29 the value of the agreement is included in the sales price of the
30 tangible personal property covered by the agreement. For purposes of
31 this subsection, "sales price" has the same meaning as in RCW
32 82.08.010.

33 (8) The term shall not include the sale of or charge made for labor
34 and services rendered in respect to the building, repairing, or
35 improving of any street, place, road, highway, easement, right of way,
36 mass public transportation terminal or parking facility, bridge,
37 tunnel, or trestle which is owned by a municipal corporation or

1 political subdivision of the state or by the United States and which is
2 used or to be used primarily for foot or vehicular traffic including
3 mass transportation vehicles of any kind.

4 (9) The term shall also not include sales of chemical sprays or
5 washes to persons for the purpose of postharvest treatment of fruit for
6 the prevention of scald, fungus, mold, or decay, nor shall it include
7 sales of feed, seed, seedlings, fertilizer, agents for enhanced
8 pollination including insects such as bees, and spray materials to:

9 (a) Persons who participate in the federal conservation reserve
10 program, the environmental quality incentives program, the wetlands
11 reserve program, and the wildlife habitat incentives program, or their
12 successors administered by the United States department of agriculture;

13 (b) farmers for the purpose of producing for sale any agricultural
14 product; and (c) farmers acting under cooperative habitat development
15 or access contracts with an organization exempt from federal income tax
16 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
17 fish and wildlife to produce or improve wildlife habitat on land that
18 the farmer owns or leases.

19 (10) The term shall not include the sale of or charge made for
20 labor and services rendered in respect to the constructing, repairing,
21 decorating, or improving of new or existing buildings or other
22 structures under, upon, or above real property of or for the United
23 States, any instrumentality thereof, or a county or city housing
24 authority created pursuant to chapter 35.82 RCW, including the
25 installing, or attaching of any article of tangible personal property
26 therein or thereto, whether or not such personal property becomes a
27 part of the realty by virtue of installation. Nor shall the term
28 include the sale of services or charges made for the clearing of land
29 and the moving of earth of or for the United States, any
30 instrumentality thereof, or a county or city housing authority. Nor
31 shall the term include the sale of services or charges made for
32 cleaning up for the United States, or its instrumentalities,
33 radioactive waste and other byproducts of weapons production and
34 nuclear research and development.

35 (11) The term shall not include the sale of or charge made for
36 labor, services, or tangible personal property pursuant to agreements
37 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the
2 labor, services, or tangible personal property, and a transit agency,
3 as defined in RCW 81.104.015, performs the labor or services.

4 (12) Until July 1, 2010, the term shall not include the sale of or
5 charge made for labor and services rendered for environmental remedial
6 action as defined in section 3 of this act.

7 **Sec. 2.** RCW 82.04.190 and 2005 c 514 s 103 are each amended to
8 read as follows:

9 "Consumer" means the following:

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

34 (2)(a) Any person engaged in any business activity taxable under
35 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
36 uses any telephone service as defined in RCW 82.04.065, other than for
37 resale in the regular course of business; (c) any person who purchases,

1 acquires, or uses any service defined in RCW 82.04.050(2)(a), other
2 than for resale in the regular course of business or for the purpose of
3 satisfying the person's obligations under an extended warranty as
4 defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or
5 uses any amusement and recreation service defined in RCW
6 82.04.050(3)(a), other than for resale in the regular course of
7 business; (e) any person who is an end user of software; and (f) any
8 person who purchases or acquires an extended warranty as defined in RCW
9 82.04.050(7) other than for resale in the regular course of business;

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

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

36 (5) Any person who is an owner, lessee, or has the right of
37 possession to personal property which is being constructed, repaired,

1 improved, cleaned, imprinted, or otherwise altered by a person engaged
2 in business;

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

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

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

35 (9) Any person who is an owner, lessee, or has the right of
36 possession of tangible personal property that, under the terms of an
37 extended warranty as defined in RCW 82.04.050(7), has been repaired or

1 is replacement property, but only with respect to the sale of or charge
2 made for the repairing of the tangible personal property or the
3 replacement property; and

4 (10) Until July 1, 2010, any person engaged in the business of
5 conducting environmental remedial action as defined in section 3 of
6 this act.

7 **NEW SECTION.** **Sec. 3.** A new section is added to chapter 82.04 RCW
8 to read as follows:

9 (1) Upon every person engaging within this state in the business of
10 environmental remedial action, the amount of tax with respect to such
11 business shall be equal to the value of the gross income of the
12 business multiplied by the rate 0.471 percent.

13 (2)(a) For purposes of this section, "environmental remedial
14 action" means:

15 (i) Those services related to the identification, investigation, or
16 cleanup arising out of the release or threatened release of hazardous
17 substances in Washington state that are conducted under contract with
18 the department of ecology or under an enforcement order, agreed order,
19 or consent decree executed by the department of ecology, or those
20 services, when evaluated as a whole, that are the substantial
21 equivalent of a department of ecology-conducted or supervised remedial
22 action under the model toxics control act, chapter 70.105D RCW; or

23 (ii) Those services related to the identification, investigation,
24 or cleanup of a facility located in Washington state that are conducted
25 under contract with the United States environmental protection agency
26 or under an order or consent decree executed by the United States
27 environmental protection agency, or that are consistent with the
28 national contingency plan adopted under the comprehensive environmental
29 response compensation and liability act, 42 U.S.C. Sec. 9605 as it
30 exists on July 1, 1998, and those services are conducted at facilities
31 that are included on the national priorities list adopted under 42
32 U.S.C. Sec. 9605 as it exists on July 1, 1998, or at facilities subject
33 to a removal action authorized under 42 U.S.C. Sec. 9604 as it exists
34 on July 1, 1998.

35 (b) "Environmental remedial action" does not include services that
36 would normally be rendered as part of site development, redevelopment,
37 or maintenance including:

1 (i) Demolition of structures, including services related to removal
2 of asbestos or lead paint from structures, unless removal of the
3 structure is necessary to gain access to underlying soil or ground
4 water contamination;

5 (ii) Placement of pavement and sidewalks;

6 (iii) Landscaping of the site; and

7 (iv) Installation of new underground storage tank systems.

8 (3) A site is eligible for environmental remedial action upon
9 submittal, via certified mail to the department of ecology and the
10 department of revenue, of the following:

11 (a) A certification from the owner, the department of ecology, or
12 the United States environmental protection agency, containing the
13 following information:

14 (i) The location of the site, shown on a map and identified by
15 parcel number or numbers and street address;

16 (ii) The name and address and daytime phone number of a contact
17 person;

18 (iii) A statement that the proposed environmental remedial actions
19 will be conducted by the department of ecology or its authorized
20 contractor under chapter 70.105D RCW or will be substantially
21 equivalent to a department of ecology-conducted or supervised remedial
22 action under the model toxics control act, chapter 70.105D RCW, or will
23 be conducted by the United States environmental protection agency or
24 its authorized contractor or will be consistent with the national
25 contingency plan under 42 U.S.C. Sec. 9605 as it exists on July 1,
26 1998; and

27 (iv) A description of the proposed environmental remedial actions
28 to be taken; and

29 (b)(i) A certification from a certified underground storage tank
30 service supervisor as authorized in chapter 90.76 RCW, from a
31 professional engineer licensed in the state of Washington, or from an
32 environmental professional who subscribes to a code of professional
33 responsibility administered by a recognized organization representing
34 such professions containing the following information:

35 (A) Confirmation that an environmental remedial action as defined
36 in this section is to be conducted at the site;

37 (B) The location of the site, shown on a map and identified by

1 parcel number or numbers and street address, and the approximate
2 location of the proposed environmental remedial action; and

3 (C) The name, address, telephone number, and uniform business
4 identifier of the person providing the certification; or

5 (ii) If applicable to the site, a copy of an enforcement order,
6 agreed order, or consent decree executed by the department of ecology
7 or the United States environmental protection agency.

8 (4) The department of revenue shall respond in writing to the owner
9 within thirty days confirming receipt of the certification, or
10 certifications, of eligibility. Under RCW 82.32.330(3)(m),
11 certification is subject to disclosure and copies may be obtained from
12 the department upon request. The request shall be in writing and shall
13 identify the site by county and parcel number or numbers.

14 (5) The owner shall provide a copy of the confirmation from the
15 department of revenue to each person who renders environmental remedial
16 action at the site. Each person who renders such action shall
17 separately state the charges for labor and services associated with the
18 environmental remedial action.

19 (6) Upon completion of the environmental remedial action, the owner
20 shall submit to the department of ecology a report documenting the
21 environmental remedial actions conducted at the site and documenting
22 compliance with the requirements of chapter 70.105D RCW.

23 (7) In addition to any other penalties, a person who files a
24 certificate with the department of ecology or the department of revenue
25 that contains falsehoods or misrepresentations are subject to penalties
26 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a
27 person who improperly reports the person's tax class shall be assessed
28 a penalty of fifty percent of the tax due, in addition to other taxes
29 or penalties, together with interest. The department of revenue shall
30 waive the penalty imposed under this section if it finds that the
31 falsehoods or misrepresentations or improper reporting of the tax
32 classification was due to circumstances beyond the control of the
33 person.

34 (8) This section expires July 1, 2010.

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