
ENGROSSED SUBSTITUTE SENATE BILL 5756

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington **52nd Legislature** **1991 Regular Session**

By Senate Committee on Energy & Utilities (originally sponsored by Senators Hayner, Jesernig and Thorsness; by request of Utilities & Transportation Commission).

Read first time March 6, 1991.

1 AN ACT Relating to low-level waste sites; amending RCW 81.04.010,
2 82.16.010, 82.04.260, and 82.29A.020; adding a new chapter to Title 81
3 RCW; adding new sections to chapter 43.200 RCW; adding new sections to
4 chapter 43.31 RCW; providing effective dates; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** State and national policy directs that
8 the management of low-level radioactive waste be accomplished by a
9 system of interstate compacts and the development of regional disposal
10 sites. The Northwest regional compact, comprised of the states of
11 Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as
12 its disposal facility the low-level radioactive waste disposal site
13 located near Richland, Washington. This site is expected to be the
14 sole site for disposal of low-level radioactive waste for compact

1 members effective January 1, 1993. Future closure of this site will
2 require significant financial resources.

3 Low-level radioactive waste is generated by essential activities
4 and services that benefit the citizens of the state. Washington
5 state's low-level radioactive waste disposal site has been used by the
6 nation and the Northwest compact as a disposal site since 1965. The
7 public has come to rely on access to this site for disposal of low-
8 level radioactive waste, which requires separate handling from other
9 solid and hazardous wastes. The price of disposing of low-level
10 radioactive waste at the Washington state low-level radioactive waste
11 disposal site is anticipated to increase when the federal low-level
12 radioactive waste policy amendments act of 1985 is implemented and
13 waste generated outside the Northwest compact states is excluded.

14 When these events occur, to protect Washington and other Northwest
15 compact states' businesses and services, such as electrical production,
16 medical and university research, and private industries, upon which the
17 public relies, there will be a need to regulate the rates charged by
18 the operator of Washington's low-level radioactive waste disposal site.
19 This chapter is adopted pursuant to section 8, chapter 21, Laws of
20 1990.

21 NEW SECTION. **Sec. 2.** Definitions in this section apply
22 throughout this chapter unless the context clearly requires otherwise.

23 (1) "Commission" means the Washington utilities and transportation
24 commission.

25 (2) "Effective rate" means the highest permissible rate, calculated
26 as the lowest contract rate plus an administrative fee, if applicable,
27 determined pursuant to section 5 of this act.

28 (3) "Extraordinary volume" means volumes of low-level radioactive
29 waste delivered to a site caused by nonrecurring events, outside normal

1 operations of a generator, that are in excess of twenty thousand cubic
2 feet or twenty percent of the preceding year's total volume at such
3 site, whichever is less.

4 (4) "Extraordinary volume adjustment" means a mechanism that
5 allocates the potential rate reduction benefits of an extraordinary
6 volume between all generators and the generator responsible for such
7 extraordinary volume as described in section 8 of this act.

8 (5) "Generator" means a person, partnership, association,
9 corporation, or any other entity whatsoever that, as a part of its
10 activities, produces low-level radioactive waste.

11 (6) "Inflation adjustment" means a mechanism that adjusts the
12 maximum disposal rate by a percentage equal to the change in price
13 levels in the preceding period, as measured by a common, verifiable
14 price index as determined in section 5 of this act.

15 (7) "Initial rate proceeding" means the proceeding described in
16 section 5 of this act.

17 (8) "Maximum disposal rate" means the rate described in section 6
18 of this act.

19 (9) "Site" means a location, structure, or property used or to be
20 used for the storage, treatment, or disposal of low-level radioactive
21 waste for compensation within the state of Washington.

22 (10) "Site operator" means a low-level radioactive waste site
23 operating company as defined in RCW 81.04.010.

24 (11) "Volume adjustment" means a mechanism that adjusts the maximum
25 disposal rate in response to material changes in volumes of waste
26 deposited at the site during the preceding period so as to provide a
27 level of total revenues sufficient to recover the costs to operate and
28 maintain the site.

1 **Sec. 3.** RCW 81.04.010 and 1981 c 13 s 2 are each amended to read
2 as follows:

3 As used in this title, unless specially defined otherwise or unless
4 the context indicates otherwise:

5 "Commission" means the utilities and transportation commission.

6 "Commissioner" means one of the members of such commission.

7 "Corporation" includes a corporation, company, association or joint
8 stock association.

9 "Low-level radioactive waste site operating company" includes every
10 corporation, company, association, joint stock association,
11 partnership, and person, their lessees, trustees, or receivers
12 appointed by any court whatsoever, owning, operating, controlling, or
13 managing a low-level radioactive waste disposal site or sites located
14 within the state of Washington.

15 "Low-level radioactive waste" means low-level waste as defined by
16 RCW 43.145.010.

17 "Person" includes an individual, a firm or copartnership.

18 "Street railroad" includes every railroad by whatsoever power
19 operated, or any extension or extensions, branch or branches thereof,
20 for public use in the conveyance of persons or property for hire, being
21 mainly upon, along, above or below any street, avenue, road, highway,
22 bridge or public place within any one city or town, and includes all
23 equipment, switches, spurs, tracks, bridges, right of trackage,
24 subways, tunnels, stations, terminals and terminal facilities of every
25 kind used, operated, controlled or owned by or in connection with any
26 such street railroad, within this state.

27 "Street railroad company" includes every corporation, company,
28 association, joint stock association, partnership and person, their
29 lessees, trustees or receivers appointed by any court whatsoever, and
30 every city or town, owning, controlling, operating or managing any

1 street railroad or any cars or other equipment used thereon or in
2 connection therewith within this state.

3 "Railroad" includes every railroad, other than street railroad, by
4 whatsoever power operated for public use in the conveyance of persons
5 or property for hire, with all bridges, ferries, tunnels, equipment,
6 switches, spurs, tracks, stations and terminal facilities of every kind
7 used, operated, controlled or owned by or in connection with any such
8 railroad.

9 "Railroad company" includes every corporation, company,
10 association, joint stock association, partnership or person, their
11 lessees, trustees or receivers appointed by any court whatsoever,
12 owning, operating, controlling or managing any railroad or any cars or
13 other equipment used thereon or in connection therewith within this
14 state.

15 "Express company" includes every corporation, company, association,
16 joint stock association, partnership and person, their lessees,
17 trustees or receivers appointed by any court whatsoever, who shall
18 engage in or transact the business of carrying any freight, merchandise
19 or property for hire on the line of any common carrier operated in this
20 state.

21 "Common carrier" includes all railroads, railroad companies, street
22 railroads, street railroad companies, steamboat companies, express
23 companies, car companies, sleeping car companies, freight companies,
24 freight line companies, and every corporation, company, association,
25 joint stock association, partnership and person, their lessees,
26 trustees or receivers appointed by any court whatsoever, and every city
27 or town, owning, operating, managing or controlling any such agency for
28 public use in the conveyance of persons or property for hire within
29 this state.

1 "Vessel" includes every species of watercraft, by whatsoever power
2 operated, for public use in the conveyance of persons or property for
3 hire over and upon the waters within this state, excepting all
4 towboats, tugs, scows, barges, and lighters, and excepting rowboats and
5 sailing boats under twenty gross tons burden, open steam launches of
6 five tons gross and under, and vessels under five tons gross propelled
7 by gas, fluid, naphtha or electric motors.

8 "Steamboat company" includes every corporation, company,
9 association, joint stock association, partnership and person, their
10 lessees, trustees or receivers, appointed by any court whatsoever,
11 owning, controlling, leasing, operating or managing any vessel over and
12 upon the waters of this state.

13 "Transportation of property" includes any service in connection
14 with the receiving, delivery, elevation, transfer in transit,
15 ventilation, refrigeration, icing, storage and handling of the property
16 transported, and the transmission of credit.

17 "Transportation of persons" includes any service in connection with
18 the receiving, carriage and delivery of the person transported and his
19 baggage and all facilities used, or necessary to be used in connection
20 with the safety, comfort and convenience of the person transported.

21 "Public service company" includes every common carrier.

22 The term "service" is used in this title in its broadest and most
23 inclusive sense.

24 NEW SECTION. **Sec. 4.** (1) The commission shall have
25 jurisdiction over the sites and site operators as set forth in this
26 chapter.

27 (2)(a) The commission shall establish rates to be charged by site
28 operators. In establishing the rates, the commission shall assure that
29 they are fair, just, reasonable, and sufficient considering the value

1 of the site operator's leasehold and license interests, the unique
2 nature of its business operations, the site operator's liability
3 associated with the site, its investment incurred over the term of its
4 operations, and the rate of return equivalent to that earned by
5 comparable enterprises. The rates shall only take effect following a
6 finding that the site operator is a monopoly pursuant to section 11 of
7 this act.

8 (b) In exercising the power in this subsection the commission may
9 use any standard, formula, method, or theory of valuation reasonably
10 calculated to arrive at the objective of prescribing and authorizing
11 fair, just, reasonable, and sufficient rates. The relation of site
12 operator expenses to site operator revenues may be deemed the proper
13 test of a reasonable return.

14 (3) In all respects in which the commission has power and authority
15 under this chapter, applications and complaints may be made and filed
16 with it, process issued, hearings held, opinions, orders, and decisions
17 made and filed, petitions for rehearing filed and acted upon, and
18 petitions for review to the superior court filed therewith, appeals
19 filed with the appellate courts of this state, considered and disposed
20 of by said courts in the manner, under the conditions, and subject to
21 the limitations, and with the effect specified in this title for public
22 service companies generally.

23 (4) At any time after January 1, 1992, the commission may: (a)
24 Prescribe a system of accounts for site operators using as a starting
25 point the existing system used by site operators; (b) audit the books
26 of site operators; (c) obtain books and records from site operators;
27 (d) assess penalties; and (e) require semiannual reports regarding the
28 results of operations for the site.

29 (5) The commission may adopt rules necessary to carry out its
30 functions under this chapter.

1 NEW SECTION. **Sec. 5.** (1) On or before March 1, 1992, site
2 operators shall file a request with the commission to establish an
3 initial maximum disposal rate. The filing shall include, at a minimum,
4 testimony, exhibits, workpapers, summaries, annual reports, cost
5 studies, proposed tariffs, and other documents as required by the
6 commission in rate cases generally under its jurisdiction.

7 (2) After receipt of a request, the commission shall set the
8 request for a hearing and require the site operator to provide for
9 notice to all known customers that ship or deliver waste to the site.
10 The proceedings before the commission shall be conducted in accordance
11 with chapter 34.05 RCW and rules of procedure established by the
12 commission.

13 (3) No later than January 1, 1993, the commission shall establish
14 the initial maximum disposal rates that may be charged by site
15 operators.

16 (4) In the initial rate proceeding the commission also shall
17 determine the factors necessary to calculate the inflation, volume, and
18 extraordinary volume adjustments.

19 (5) The commission also shall determine the administrative fee,
20 which shall be a percentage or an amount that represents increased
21 administrative costs associated with acceptance of small volumes of
22 waste by a site operator. The administrative fee may be revised by the
23 commission from time to time upon its own motion or upon the petition
24 of an interested person.

25 (6) The rates specified in this section shall only take effect
26 following a finding that the site operator is a monopoly pursuant to
27 section 11 of this act.

28 NEW SECTION. **Sec. 6.** (1) The maximum disposal rates that a
29 site operator may charge generators shall be determined in accordance

1 with this section. The rates shall include all charges for disposal
2 services at the site.

3 (2) Initially, the maximum disposal rates shall be the initial
4 rates established pursuant to section 5 of this act.

5 (3) Subsequently, the maximum disposal rates shall be adjusted
6 semiannually in January and July of each year to incorporate inflation
7 and volume adjustments. Such adjustments shall take effect thirty days
8 after filing with the commission unless the commission authorizes that
9 the adjustments take effect earlier, or the commission contests the
10 calculation of the adjustments, in which case the commission may
11 suspend the filing. A site operator shall provide notice to its
12 customers concurrent with the filing.

13 (4)(a) Subsequently, a site operator may also file for revisions to
14 the maximum disposal rates due to:

15 (i) Changes in any governmentally imposed fee, surcharge, or tax
16 assessed on a volume or a gross revenue basis against or collected by
17 the site operator, including site closure fees, perpetual care and
18 maintenance fees, business and occupation taxes, site surveillance
19 fees, leasehold excise taxes, commission regulatory fees, municipal
20 taxes, and a tax or payment in lieu of taxes authorized by the state to
21 compensate the county in which a site is located for that county's
22 legitimate costs arising out of the presence of that site within that
23 county; or

24 (ii) Factors outside the control of the site operator such as a
25 material change in regulatory requirements regarding the physical
26 operation of the site.

27 (b) Revisions to the maximum disposal rate shall take effect thirty
28 days after filing with the commission unless the commission suspends
29 the filing or authorizes the proposed adjustments to take effect
30 earlier.

1 (5) Upon establishment of a contract rate pursuant to section 7 of
2 this act for a disposal fee, the site operator may not collect a
3 disposal fee that is greater than the effective rate. The effective
4 rate shall be in effect so long as such contract rate remains in
5 effect. Adjustments to the maximum disposal rates may be made during
6 the time an effective rate is in place. Contracts for disposal of
7 extraordinary volumes pursuant to section 8 of this act shall not be
8 considered in determining the effective rate.

9 (6) The site operator may petition the commission for new maximum
10 disposal rates at any time. Upon receipt of such a petition, the
11 commission shall set the matter for hearing and shall issue an order
12 within seven months of the filing of the petition. The petition shall
13 be accompanied by the documents required to accompany the filing for
14 initial rates. The hearing on the petition shall be conducted in
15 accordance with the commission's rules of practice and procedure.

16 (7) This section shall only take effect following a finding that
17 the site operator is a monopoly pursuant to section 11 of this act.

18 NEW SECTION. **Sec. 7.** (1) At any time, a site operator may
19 contract with any person to provide a contract disposal rate lower than
20 the maximum disposal rate.

21 (2) A contract or contract amendment shall be submitted to the
22 commission for approval at least thirty days before its effective date.
23 The commission may approve the contract or suspend the contract and set
24 it for hearing. If the commission takes no action within thirty days
25 of filing, the contract or amendment shall go into effect according to
26 its terms. Each contract filing shall be accompanied with
27 documentation to show that the contract does not result in
28 discrimination between generators receiving like and contemporaneous

1 service under substantially similar circumstances and provides for the
2 recovery of all costs associated with the provision of the service.

3 (3) This section shall only take effect following a finding that
4 the site operator is a monopoly pursuant to section 11 of this act.

5 NEW SECTION. **Sec. 8.** (1) In establishing the extraordinary
6 volume adjustment, unless the site operator and generator of the
7 extraordinary volume agree to a contract disposal rate, one-half of the
8 extraordinary volume delivery shall be priced at the maximum disposal
9 rate and one-half shall be priced at the site operator's incremental
10 cost to receive the delivery. Such incremental cost shall be
11 determined in the initial rate proceeding.

12 (2) For purposes of the subsequent calculation of the volume
13 adjustment, one-half of the total extraordinary volume shall be
14 included in the calculation.

15 (3) This section shall only take effect following a finding that
16 the site operator is a monopoly pursuant to section 11 of this act.

17 NEW SECTION. **Sec. 9.** (1) At any time, the commission or an
18 interested person may file a complaint against a site operator alleging
19 that the rates established pursuant to section 5 or 6 of this act are
20 not in conformity with the standards set forth in section 4 of this act
21 or that the site operator is otherwise not acting in conformity with
22 the requirements of this chapter. Upon filing of the complaint, the
23 commission shall cause a copy of the complaint to be served upon the
24 site operator. The complaining party shall have the burden of proving
25 that the maximum disposal rates determined pursuant to section 6 of
26 this act are not just, fair, reasonable, or sufficient. The hearing
27 shall conform to the rules of practice and procedure of the commission
28 for other complaint cases.

1 (2) The commission shall encourage alternate forms of dispute
2 resolution to resolve disputes between a site operator and any other
3 person regarding matters covered by this chapter.

4 NEW SECTION. **Sec. 10.** (1) A site operator shall, on or before
5 May 1, 1992, and each year thereafter, file with the commission a
6 statement showing its gross operating revenue from intrastate
7 operations for the preceding calendar year, or portion thereof, and pay
8 to the commission a fee equal to one percent of the amount of the gross
9 operating revenue, exclusive of site surveillance fees, perpetual care
10 and maintenance fees, site closure fees, and state or federally imposed
11 out-of-region surcharges.

12 (2) Fees collected under this chapter shall reasonably approximate
13 the cost of supervising and regulating site operators. The commission
14 may order a decrease in fees by March 1st of any year in which it
15 determines that the moneys then in the radioactive waste disposal
16 companies account of the public service revolving fund and the fees
17 currently to be paid will exceed the reasonable cost of supervising and
18 regulating site operators.

19 (3) Fees collected under this section or under any other provision
20 of this chapter shall be paid to the commission and shall be
21 transmitted to the state treasurer within thirty days to be deposited
22 to the credit of the public service revolving fund.

23 NEW SECTION. **Sec. 11.** (1) A low-level waste disposal site
24 operator is exempt as specified in sections 4(2)(a), 5(6), 6(7), 7(3),
25 and 8(3) of this act unless a monopoly situation exists with respect to
26 the site operated by such site operator. A monopoly situation exists
27 if either of the following is present:

1 (a) No disposal facility is available to Northwest compact
2 generators of low-level radioactive waste other than the site or sites
3 operated by such site operator or its affiliates; or

4 (b) Disposal rates at other sites are not reasonable alternatives
5 for Northwest compact generators, considering: Disposal rates at other
6 facilities; current disposal rates charged by the site operator;
7 historic relationships between the site operator's rates and rates at
8 other facilities; and changes in the operator's rates considering
9 changes in waste volumes, taxes, and fees. A monopoly situation does
10 not exist if either of the following facilities operates or is
11 projected to operate after December 31, 1992:

12 (i) Any existing low-level radioactive waste disposal site outside
13 the state of Washington, other than facilities operated by affiliates
14 of a site operator, provided that such site or sites do not charge
15 disposal rates that discriminate against Northwest compact generators,
16 except to the extent, through December 31, 1994, such discrimination is
17 authorized by amendment of current federal law.

18 (ii) An existing facility within the Northwest compact not
19 receiving low-level radioactive waste offers to receive such waste
20 under substantially similar terms and conditions.

21 (2) The exemption shall be in effect until such time as the
22 commission finds, after notice and hearing, upon motion by the
23 commission or upon petition by any interested party, that a monopoly
24 situation exists or will exist as of January 1, 1993. The finding
25 shall be based upon application of the criteria set forth in this
26 section. The commission may assess a site operator for all of the
27 commission's costs of supervision and regulation prior to and relative
28 to determining whether the exemption applies to the site operator. If
29 the commission determines that a site operator is not subject to the

1 exemption, it shall collect its costs of supervision and regulation
2 under section 10 of this act.

3 (3) When an exemption is in effect, any increase in the rates
4 charged by the operator effective January 1, 1993, for services other
5 than the base rate for disposal of solid material in packages of twelve
6 cubic feet or less shall be no more than the percentage increase in the
7 base rate in effect on January 1, 1993.

8 NEW SECTION. **Sec. 12.** (1) At any time after this chapter has
9 been implemented with respect to a site operator, such site operator
10 may petition the commission to be classified as competitive. The
11 commission may initiate classification proceedings on its own motion.
12 The commission shall enter its final order with respect to
13 classification within seven months from the date of filing of a
14 company's petition or the commission's motion.

15 (2) The commission shall classify a site operator as a competitive
16 company if the commission finds, after notice and hearing, that the
17 disposal services offered are subject to competition because the
18 company's customers have reasonably available alternatives. In
19 determining whether a company is competitive, the commission's
20 consideration shall include, but not be limited to:

21 (a) Whether the system of interstate compacts and regional disposal
22 sites established by federal law has been implemented so that the
23 Northwest compact site located near Richland, Washington is the
24 exclusive site option for disposal by customers within the Northwest
25 compact states;

26 (b) Whether waste generated outside the Northwest compact states is
27 excluded; and

1 (c) The ability of alternative disposal sites to make functionally
2 equivalent services readily available at competitive rates, terms, and
3 conditions.

4 (3) The commission may reclassify a competitive site operator if
5 reclassification would protect the public interest as set forth in this
6 section.

7 (4) Competitive low-level radioactive waste disposal companies
8 shall be exempt from commission regulation and fees during the time
9 they are so classified.

10 NEW SECTION. **Sec. 13.** Nothing in this chapter shall be
11 construed to affect the jurisdiction of another state agency.

12 **Sec. 14.** RCW 82.16.010 and 1989 c 302 s 203 are each amended to
13 read as follows:

14 For the purposes of this chapter, unless otherwise required by the
15 context:

16 (1) "Railroad business" means the business of operating any
17 railroad, by whatever power operated, for public use in the conveyance
18 of persons or property for hire. It shall not, however, include any
19 business herein defined as an urban transportation business.

20 (2) "Express business" means the business of carrying property for
21 public hire on the line of any common carrier operated in this state,
22 when such common carrier is not owned or leased by the person engaging
23 in such business.

24 (3) "Railroad car business" means the business of renting, leasing
25 or operating stock cars, furniture cars, refrigerator cars, fruit cars,
26 poultry cars, tank cars, sleeping cars, parlor cars, buffet cars,
27 tourist cars, or any other kinds of cars used for transportation of
28 property or persons upon the line of any railroad operated in this

1 state when such railroad is not owned or leased by the person engaging
2 in such business.

3 (4) "Water distribution business" means the business of operating
4 a plant or system for the distribution of water for hire or sale.

5 (5) "Light and power business" means the business of operating a
6 plant or system for the generation, production or distribution of
7 electrical energy for hire or sale and/or for the wheeling of
8 electricity for others.

9 (6) "Telegraph business" means the business of affording
10 telegraphic communication for hire.

11 (7) "Gas distribution business" means the business of operating a
12 plant or system for the production or distribution for hire or sale of
13 gas, whether manufactured or natural.

14 (8) "Motor transportation business" means the business (except
15 urban transportation business) of operating any motor propelled vehicle
16 by which persons or property of others are conveyed for hire, and
17 includes, but is not limited to, the operation of any motor propelled
18 vehicle as an auto transportation company (except urban transportation
19 business), common carrier or contract carrier as defined by RCW
20 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
21 business" shall not mean or include the transportation of logs or other
22 forest products exclusively upon private roads or private highways.

23 (9) "Urban transportation business" means the business of operating
24 any vehicle for public use in the conveyance of persons or property for
25 hire, insofar as (a) operating entirely within the corporate limits of
26 any city or town, or within five miles of the corporate limits thereof,
27 or (b) operating entirely within and between cities and towns whose
28 corporate limits are not more than five miles apart or within five
29 miles of the corporate limits of either thereof. Included herein, but
30 without limiting the scope hereof, is the business of operating

1 passenger vehicles of every type and also the business of operating
2 cartage, pickup, or delivery services, including in such services the
3 collection and distribution of property arriving from or destined to a
4 point within or without the state, whether or not such collection or
5 distribution be made by the person performing a local or interstate
6 line-haul of such property.

7 (10) "Public service business" means any of the businesses defined
8 in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any
9 business subject to control by the state, or having the powers of
10 eminent domain and the duties incident thereto, or any business
11 hereafter declared by the legislature to be of a public service nature,
12 except telephone business as defined in RCW 82.04.065 and low-level
13 radioactive waste site operating companies as redefined in RCW
14 81.04.010. It includes, among others, without limiting the scope
15 hereof: Airplane transportation, boom, dock, ferry, log patrol, pipe
16 line, toll bridge, toll logging road, water transportation and wharf
17 businesses.

18 (11) "Tugboat business" means the business of operating tugboats,
19 towboats, wharf boats or similar vessels in the towing or pushing of
20 vessels, barges or rafts for hire.

21 (12) "Gross income" means the value proceeding or accruing from the
22 performance of the particular public service or transportation business
23 involved, including operations incidental thereto, but without any
24 deduction on account of the cost of the commodity furnished or sold,
25 the cost of materials used, labor costs, interest, discount, delivery
26 costs, taxes, or any other expense whatsoever paid or accrued and
27 without any deduction on account of losses.

28 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
29 year," "person," "value proceeding or accruing," "business," "engaging

1 in business," "in this state," "within this state," "cash discount" and
2 "successor" shall apply equally in the provisions of this chapter.

3 **Sec. 15.** RCW 82.04.260 and 1990 c 21 s 2 are each amended to read
4 as follows:

5 (1) Upon every person engaging within this state in the business of
6 buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye
7 and barley, but not including any manufactured or processed products
8 thereof, and selling the same at wholesale; the tax imposed shall be
9 equal to the gross proceeds derived from such sales multiplied by the
10 rate of one one-hundredth of one percent.

11 (2) Upon every person engaging within this state in the business of
12 manufacturing wheat into flour, barley into pearl barley, soybeans into
13 soybean oil, or sunflower seeds into sunflower oil; as to such persons
14 the amount of tax with respect to such business shall be equal to the
15 value of the flour, pearl barley, or oil manufactured, multiplied by
16 the rate of one-eighth of one percent.

17 (3) Upon every person engaging within this state in the business of
18 splitting or processing dried peas; as to such persons the amount of
19 tax with respect to such business shall be equal to the value of the
20 peas split or processed, multiplied by the rate of one-quarter of one
21 percent.

22 (4) Upon every person engaging within this state in the business of
23 manufacturing seafood products which remain in a raw, raw frozen, or
24 raw salted state at the completion of the manufacturing by that person;
25 as to such persons the amount of tax with respect to such business
26 shall be equal to the value of the products manufactured, multiplied by
27 the rate of one-eighth of one percent.

28 (5) Upon every person engaging within this state in the business of
29 manufacturing by canning, preserving, freezing or dehydrating fresh

1 fruits and vegetables; as to such persons the amount of tax with
2 respect to such business shall be equal to the value of the products
3 canned, preserved, frozen or dehydrated multiplied by the rate of
4 three-tenths of one percent.

5 (6) Upon every nonprofit corporation and nonprofit association
6 engaging within this state in research and development, as to such
7 corporations and associations, the amount of tax with respect to such
8 activities shall be equal to the gross income derived from such
9 activities multiplied by the rate of forty-four one-hundredths of one
10 percent.

11 (7) Upon every person engaging within this state in the business
12 of slaughtering, breaking and/or processing perishable meat products
13 and/or selling the same at wholesale only and not at retail; as to such
14 persons the tax imposed shall be equal to the gross proceeds derived
15 from such sales multiplied by the rate of twenty-five one-hundredths of
16 one percent through June 30, 1986, and one-eighth of one percent
17 thereafter.

18 (8) Upon every person engaging within this state in the business
19 of making sales, at retail or wholesale, of nuclear fuel assemblies
20 manufactured by that person, as to such persons the amount of tax with
21 respect to such business shall be equal to the gross proceeds of sales
22 of the assemblies multiplied by the rate of twenty-five one-hundredths
23 of one percent.

24 (9) Upon every person engaging within this state in the business
25 of manufacturing nuclear fuel assemblies, as to such persons the amount
26 of tax with respect to such business shall be equal to the value of the
27 products manufactured multiplied by the rate of twenty-five one-
28 hundredths of one percent.

29 (10) Upon every person engaging within this state in the business
30 of acting as a travel agent; as to such persons the amount of the tax

1 with respect to such activities shall be equal to the gross income
2 derived from such activities multiplied by the rate of twenty-five one-
3 hundredths of one percent.

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

12 (12) Upon every person engaging within this state in the business
13 of stevedoring and associated activities pertinent to the movement of
14 goods and commodities in waterborne interstate or foreign commerce; as
15 to such persons the amount of tax with respect to such business shall
16 be equal to the gross proceeds derived from such activities multiplied
17 by the rate of thirty-three one hundredths of one percent. Persons
18 subject to taxation under this subsection shall be exempt from payment
19 of taxes imposed by chapter 82.16 RCW for that portion of their
20 business subject to taxation under this subsection. Stevedoring and
21 associated activities pertinent to the conduct of goods and commodities
22 in waterborne interstate or foreign commerce are defined as all
23 activities of a labor, service or transportation nature whereby cargo
24 may be loaded or unloaded to or from vessels or barges, passing over,
25 onto or under a wharf, pier, or similar structure; cargo may be moved
26 to a warehouse or similar holding or storage yard or area to await
27 further movement in import or export or may move to a consolidation
28 freight station and be stuffed, unstuffed, containerized, separated or
29 otherwise segregated or aggregated for delivery or loaded on any mode
30 of transportation for delivery to its consignee. Specific activities

1 included in this definition are: Wharfage, handling, loading,
2 unloading, moving of cargo to a convenient place of delivery to the
3 consignee or a convenient place for further movement to export mode;
4 documentation services in connection with the receipt, delivery,
5 checking, care, custody and control of cargo required in the transfer
6 of cargo; imported automobile handling prior to delivery to consignee;
7 terminal stevedoring and incidental vessel services, including but not
8 limited to plugging and unplugging refrigerator service to containers,
9 trailers, and other refrigerated cargo receptacles, and securing ship
10 hatch covers.

11 (13) Upon every person engaging within this state in the business
12 of disposing of low-level waste, as defined in RCW 43.145.010; as to
13 such persons the amount of the tax with respect to such business shall
14 be equal to the gross income of the business, excluding any fees
15 imposed under chapter 43.200 RCW, multiplied by the rate of fifteen
16 percent.

17 (a) The rate specified in this subsection shall be reduced to ten
18 percent (~~((upon the effective date of legislation adopted pursuant to~~
19 ~~RCW 81.04.520 governing regulation of the business of low level~~
20 ~~radioactive waste disposal))~~ on the effective date of this section.

21 (b) The rate specified in this subsection shall be further reduced
22 to five percent on January 1, 1992(~~(, if (a) of this subsection has~~
23 ~~taken effect))~~).

24 (c) The rate specified in this subsection shall be further reduced
25 to three percent on July 1, 1993.

26 If the gross income of the taxpayer is attributable to activities
27 both within and without this state, the gross income attributable to
28 this state shall be determined in accordance with the methods of
29 apportionment required under RCW 82.04.460.

1 (14) Upon every person engaging within this state as an insurance
2 agent, insurance broker, or insurance solicitor licensed under chapter
3 48.17 RCW; as to such persons, the amount of the tax with respect to
4 such licensed activities shall be equal to the gross income of such
5 business multiplied by the rate of one percent.

6 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.200
7 RCW to read as follows:

8 The director of the department of ecology shall require that
9 generators of waste pay a fee for each cubic foot of waste disposed at
10 any facility in the state equal to six dollars and fifty cents. The
11 fee shall be imposed specifically on the generator of the waste and
12 shall not be considered to apply in any way to the low-level site
13 operator's disposal activities. The fee shall be allocated in
14 accordance with sections 17 and 18 of this act. This subsection shall
15 be invalidated and the authorization to collect a surcharge removed if
16 the legislature or any administrative agency of the state of Washington
17 prior to January 1, 1993, (1) imposes fees, assessments, or charges
18 other than perpetual care and maintenance, site surveillance, and site
19 closing fees currently applicable to the Hanford commercial low-level
20 waste site operator's activities, (2) imposes any additional fees,
21 assessments, or charges on generators using the Hanford commercial low-
22 level waste site, or (3) increases any existing fees, assessments, or
23 charges.

24 NEW SECTION. **Sec. 17.** A new section is added to chapter 43.200
25 RCW to read as follows:

26 A portion of the surcharge received under section 16 of this act
27 shall be remitted monthly to the county in which the low-level
28 radioactive waste disposal facility is located in the following manner:

1 (1) During 1993, six dollars and fifty cents per cubic foot of
2 waste;

3 (2) During 1994, three dollars and twenty-five cents per cubic foot
4 of waste; and

5 (3) During 1995 and thereafter, two dollars per cubic foot of
6 waste.

7 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.200
8 RCW to read as follows:

9 Except for moneys that may be remitted to a county in which a low-
10 level radioactive waste disposal facility is located, all surcharges
11 authorized under section 16 of this act shall be deposited in the fund
12 created in section 19 of this act.

13 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.31 RCW
14 to read as follows:

15 The Hanford area economic investment fund is established in the
16 custody of the state treasurer. Moneys in the fund shall only be used
17 pursuant to the recommendations of the committee created in section 20
18 of this act and the approval of the director of the department of trade
19 and economic development for Hanford area revolving loan funds, Hanford
20 area infrastructure projects, or other Hanford area economic
21 development and diversification projects, but may not be used for
22 government or nonprofit organization operating expenses. Up to five
23 percent of moneys in the fund may be used for program administration.
24 For the purpose of this chapter "Hanford area" means Benton and
25 Franklin counties. Disbursements from the fund shall be on the
26 authorization of the director of trade and economic development or the
27 director's designee after an affirmative vote of at least six members
28 of the committee created in section 20 of this act on any

1 recommendations by the committee created in section 20 of this act.
2 The fund is subject to the allotment procedures under chapter 43.88
3 RCW, but no appropriation is required for disbursements. The
4 legislature intends to establish similar economic investment funds for
5 areas that develop low-level radioactive waste disposal facilities.

6 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.31 RCW
7 to read as follows:

8 The Hanford area economic investment fund committee staffed by the
9 local associate development organization is hereby established.

10 (1) The committee shall have eleven members. The governor shall
11 appoint the members, in consultation with the Hanford area associate
12 development organization and Hanford area elected officials, subject to
13 the following requirements:

14 (a) All members shall either reside or be employed within the
15 Hanford area;

16 (b) The committee shall have a balanced membership representing
17 one member each from the elected leadership of Benton county, Franklin
18 county, the city of Richland, the city of Kennewick, the city of Pasco,
19 a Hanford area port district, the labor community, and four members
20 from the Hanford area business and financial community.

21 (c) Careful consideration shall be given to assure minority
22 representation on the committee.

23 (2) Each member appointed by the governor shall serve a term of
24 three years, except that of the members first appointed, four shall
25 serve two-year terms and four shall serve one-year terms. A person
26 appointed to fill a vacancy of a member shall be appointed in a like
27 manner and shall serve for only the unexpired term. A member is
28 eligible for reappointment. A member may be removed by the governor
29 for cause.

1 (3) The governor shall designate a member of the committee as its
2 chairperson. The committee may elect such other officers as it deems
3 appropriate. Six members of the committee constitute a quorum and six
4 affirmative votes are necessary for the transaction of business or the
5 exercise of any power or function of the committee.

6 (4) The members shall serve without compensation, but are entitled
7 to reimbursement for actual and necessary expenses incurred in the
8 performance of official duties in accordance with RCW 43.03.050 and
9 43.03.060.

10 (5) Members shall not be liable to the state, to the fund, or to
11 any other person as a result of their activities, whether ministerial
12 or discretionary, as members except for willful dishonesty or
13 intentional violations of law. The department may purchase liability
14 insurance for members and may indemnify these persons against the
15 claims of others.

16 NEW SECTION. **Sec. 21.** A new section is added to Chapter 43.31 RCW
17 to read as follows:

18 The Hanford area economic investment fund committee created under
19 section 20 of this act may:

20 (1) Adopt bylaws for the regulation of its affairs and the conduct
21 of its business;

22 (2) Utilize the services of other governmental agencies;

23 (3) Accept from any federal or state agency loans or grants for the
24 purposes of funding Hanford area revolving loan funds, Hanford area
25 infrastructure projects, or Hanford area economic development projects;

26 (4) Recommend to the director rules for the administration of the
27 program, including the terms and rates pertaining to its loans, and
28 criteria for awarding grants, loans, and financial guarantees;

1 (5) Recommend to the director a spending strategy for the moneys in
2 the fund created in section 19 of this act. The strategy shall include
3 five and ten year goals for economic development and diversification
4 for use of the moneys in the Hanford area; and

5 (6) Recommend to the director no more than two allocations eligible
6 for funding per calendar year, with a first priority on Hanford area
7 revolving loan allocations, and Hanford area infrastructure allocations
8 followed by other Hanford area economic development and diversification
9 projects if the committee finds that there are no suitable allocations
10 in the priority allocations described in this section.

11 NEW SECTION. **Sec. 22.** Sections 1, 2, and 4 through 13 of this
12 act shall constitute a new chapter in Title 81 RCW.

13 **Sec. 23.** RCW 82.29A.020 and 1986 c 285 s 1 are each amended to
14 read as follows:

15 As used in this chapter the following terms shall be defined as
16 follows, unless the context otherwise requires:

17 (1) "Leasehold interest" shall mean an interest in publicly owned
18 real or personal property which exists by virtue of any lease, permit,
19 license, or any other agreement, written or verbal, between the public
20 owner of the property and a person who would not be exempt from
21 property taxes if that person owned the property in fee, granting
22 possession and use, to a degree less than fee simple ownership:
23 PROVIDED, That no interest in personal property (excluding land or
24 buildings) which is owned by the United States, whether or not as
25 trustee, or by any foreign government shall constitute a leasehold
26 interest hereunder when the right to use such property is granted
27 pursuant to a contract solely for the manufacture or production of
28 articles for sale to the United States or any foreign government. The

1 term "leasehold interest" shall include the rights of use or occupancy
2 by others of property which is owned in fee or held in trust by a
3 public corporation, commission, or authority created under RCW
4 35.21.730 or 35.21.660 if the property is listed on or is within a
5 district listed on any federal or state register of historical sites.
6 The term "leasehold interest" shall not include road or utility
7 easements or rights of access, occupancy or use granted solely for the
8 purpose of removing materials or products purchased from a public owner
9 or the lessee of a public owner.

10 (2) "Taxable rent" shall mean contract rent as defined in
11 subsection (a) of this subsection in all cases where the lease or
12 agreement has been established or renegotiated through competitive
13 bidding, or negotiated or renegotiated in accordance with statutory
14 requirements regarding the rent payable, or negotiated or renegotiated
15 under circumstances, established by public record, clearly showing that
16 the contract rent was the maximum attainable by the lessor: PROVIDED,
17 That after January 1, 1986, with respect to any lease which has been in
18 effect for ten years or more without renegotiation, taxable rent may be
19 established by procedures set forth in subsection (b) of this
20 subsection. All other leasehold interests shall be subject to the
21 determination of taxable rent under the terms of subsection (b) of this
22 subsection.

23 For purposes of determining leasehold excise tax on any lands on
24 the Hanford reservation subleased to a private or public entity by the
25 department of ecology, taxable rent shall include only the annual cash
26 rental payment made by such entity to the department of ecology as
27 specifically referred to as rent in the sublease agreement between the
28 parties and shall not include any other fees, assessments, or charges
29 imposed on or collected by such entity irrespective of whether the

1 private or public entity pays or collects such other fees, assessments,
2 or charges as specified in the sublease agreement.

3 (a) "Contract rent" shall mean the amount of consideration due as
4 payment for a leasehold interest, including: The total of cash
5 payments made to the lessor or to another party for the benefit of the
6 lessor according to the requirements of the lease or agreement,
7 including any rents paid by a sublessee; expenditures for the
8 protection of the lessor's interest when required by the terms of the
9 lease or agreement; and expenditures for improvements to the property
10 to the extent that such improvements become the property of the lessor.
11 Where the consideration conveyed for the leasehold interest is made in
12 combination with payment for concession or other rights granted by the
13 lessor, only that portion of such payment which represents
14 consideration for the leasehold interest shall be part of contract
15 rent.

16 "Contract rent" shall not include: (i) Expenditures made by the
17 lessee, which under the terms of the lease or agreement, are to be
18 reimbursed by the lessor to the lessee or expenditures for improvements
19 and protection made pursuant to a lease or an agreement which requires
20 that the use of the improved property be open to the general public and
21 that no profit will inure to the lessee from the lease; (ii)
22 expenditures made by the lessee for the replacement or repair of
23 facilities due to fire or other casualty including payments for
24 insurance to provide reimbursement for losses or payments to a public
25 or private entity for protection of such property from damage or loss
26 or for alterations or additions made necessary by an action of
27 government taken after the date of the execution of the lease or
28 agreement; (iii) improvements added to publicly owned property by a
29 sublessee under an agreement executed prior to January 1, 1976, which
30 have been taxed as personal property of the sublessee prior to January

1 1, 1976, or improvements made by a sublessee of the same lessee under
2 a similar agreement executed prior to January 1, 1976, and such
3 improvements shall be taxable to the sublessee as personal property;
4 (iv) improvements added to publicly owned property if such improvements
5 are being taxed as personal property to any person.

6 Any prepaid contract rent shall be considered to have been paid in
7 the year due and not in the year actually paid with respect to
8 prepayment for a period of more than one year. Expenditures for
9 improvements with a useful life of more than one year which are
10 included as part of contract rent shall be treated as prepaid contract
11 rent and prorated over the useful life of the improvement or the
12 remaining term of the lease or agreement if the useful life is in
13 excess of the remaining term of the lease or agreement. Rent prepaid
14 prior to January 1, 1976, shall be prorated from the date of
15 prepayment.

16 With respect to a "product lease", the value of agricultural
17 products received as rent shall be the value at the place of delivery
18 as of the fifteenth day of the month of delivery; with respect to all
19 other products received as contract rent, the value shall be that value
20 determined at the time of sale under terms of the lease.

21 (b) If it shall be determined by the department of revenue, upon
22 examination of a lessee's accounts or those of a lessor of publicly
23 owned property, that a lessee is occupying or using publicly owned
24 property in such a manner as to create a leasehold interest and that
25 such leasehold interest has not been established through competitive
26 bidding, or negotiated in accordance with statutory requirements
27 regarding the rent payable, or negotiated under circumstances,
28 established by public record, clearly showing that the contract rent
29 was the maximum attainable by the lessor, the department may establish
30 a taxable rent computation for use in determining the tax payable under

1 authority granted in this chapter based upon the following criteria:
2 (i) Consideration shall be given to rental being paid to other lessors
3 by lessees of similar property for similar purposes over similar
4 periods of time; (ii) consideration shall be given to what would be
5 considered a fair rate of return on the market value of the property
6 leased less reasonable deductions for any restrictions on use, special
7 operating requirements or provisions for concurrent use by the lessor,
8 another person or the general public.

9 (3) "Product lease" as used in this chapter shall mean a lease of
10 property for use in the production of agricultural or marine products
11 to the extent that such lease provides for the contract rent to be paid
12 by the delivery of a stated percentage of the production of such
13 agricultural or marine products to the credit of the lessor or the
14 payment to the lessor of a stated percentage of the proceeds from the
15 sale of such products.

16 (4) "Renegotiated" means a change in the lease agreement which
17 changes the agreed time of possession, restrictions on use, the rate of
18 the cash rental or of any other consideration payable by the lessee to
19 or for the benefit of the lessor, other than any such change required
20 by the terms of the lease or agreement. In addition "renegotiated"
21 shall mean a continuation of possession by the lessee beyond the date
22 when, under the terms of the lease agreement, the lessee had the right
23 to vacate the premises without any further liability to the lessor.

24 (5) "City" means any city or town.

25 NEW SECTION. **Sec. 24.** (1) Sections 1 through 15 and 22 of this
26 act are necessary for the immediate preservation of the public peace,
27 health, or safety, or support of the state government and its existing
28 public institutions. Sections 1 through 14 and 22 of this act shall

1 take effect July 1, 1991, and section 15 of this act shall take effect
2 immediately.

3 (2) Sections 16 through 21 and 23 of this act shall take effect
4 January 1, 1993.

Passed the Senate April 25, 1991.

Passed the House April 19, 1991.

Approved by the Governor May 20, 1991.

Filed in Office of Secretary of State May 20, 1991.