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DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

CLARK COUNTY PUBLIC UTILITY DISTRICT NO. 1,
a municipal corporation;
and
GRAYS HARBOR PUBLIC UTILITY DISTRICT NO. 1,
a municipal corporation,

Plaintiffs/Respondents/Cross-Appellants

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Defendant/Appellant/Cross-Respondent

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. Anne Hirsch)

**CONSOLIDATED ANSWERING BRIEF AND
OPENING BRIEF ON CROSS-APPEAL OF RESPONDENTS**

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I.

CONSOLIDATED SUMMARY INTRODUCTION

This case presents two questions concerning a rather obscure tax known as the “Privilege Tax” that is paid only by public utility districts in the state of Washington. Because public utility districts are government entities, they do not pay taxes on their property. The privilege tax is an excise tax that is paid “in lieu of” the property tax, which the districts would otherwise pay if they were subject to that latter tax.

Each year by March 15, public utility districts file an Annual Report with the Appellant, Washington State Department of Revenue (“Department”), upon which they report gross revenues received in the previous calendar year. The Department will review the Annual Report and issue a privilege tax assessment to each public utility district by April 30, which must be paid on or before June 1. So, for example, Respondents Clark County Public Utility District No. 1 (“Clark”) and Grays Harbor Public Utility District No. 1 (“Grays Harbor”) filed annual reports for their respective district with the Department by March 31, 2003, based on calendar year 2002 revenues. The Department issued privilege tax assessments to Clark and Grays Harbor by April 30, 2003, which were then paid by June 1, 2003.

The privilege tax assessments issued by the Department to Clark and Grays Harbor contained up to four components (depending on their

business activities), only one of which is at issue in this appeal: the two percent tax (plus surtax) on gross revenues from the sale of electric energy distributed to consumers in the district. RCW 54.28.020(1)(a). During the tax years in question, Respondents Clark and Grays Harbor (individually, the “District” and collectively, the “Districts”) reported their gross revenues to the Department. The gross revenues reported, and upon which the privilege tax was assessed and paid, included revenues from “basic customer service charges” or “basic service charges.” The Districts collected the basic service charge from customers as a separate item pursuant to each District’s rate schedule. This charge was not for the sale of electric energy; rather, the charge was designed to recover certain fixed costs of each District. The charge was the same on all customer bills within the customer class, and was levied even if no electric energy was sold or delivered to the customer during the billing period.

The Districts sought a partial refund of the privilege taxes they paid to the Department in the years 2001 to 2005 on that portion of their gross revenues derived from the basic customer service charges. The Department denied the refund requests and the Districts then brought suit to obtain the refunds. The trial court granted the refunds, but limited the relief to a period to include only the last three years of tax payments (2003-2005), rather than the five years (2001-2005) sought by the Districts.

On appeal, the Department challenges the Districts’ entitlement to any refunds. The legal heart of the Department’s appeal rests on the proposition that the measure of the privilege tax—gross revenues from the sale of electric energy—broadly includes revenues from basic customer service charges. The trial court correctly found that the Department’s reading of the law ignored the plain meaning of the statute, which unambiguously does not impose the tax on the basic service charge, and which entitled the Districts to refunds.

On cross-appeal, the Districts ask this Court to order refunds for the full five years as originally requested by the Districts, rather than three years as ordered by the trial court.

In summary, this Court should affirm the trial court’s grant of refunds to the Districts, reverse the trial court’s holding that the three-year statute of limitations applied, and order the full five years of refunds as originally requested by the Districts.

II.

COUNTER STATEMENT OF THE ISSUE ON DEPARTMENT OF REVENUE’S APPEAL

The privilege tax in question is imposed by RCW 54.28.020(1)(a) on “the gross revenues derived by the district from the sale of all electric energy which [the district] distributes to consumers who are served by a distribution system owned by the district” (emphasis added). The term “gross revenue” is defined in the privilege tax law to mean “the amount

received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.” RCW 54.28.011. The term “distributes to consumers” as used in RCW 54.28.020(1)(a) is defined by RCW 54.28.010(3) to mean “the sale of electric energy to ultimate consumers thereof.”

The Districts sell electric energy to their customers and make a charge for the sale based on kilowatt hours (“kWh”) consumed. They also impose a “basic customer service” or “basic service” charge, which is a separate, cost recovery mechanism that is not based on the amount of electric energy (kWh) consumed, and which is charged even if no energy is delivered to the customer. The issue before the Court on the Department’s appeal is whether the privilege tax imposed by RCW 54.28.020(1)(a) applies to the non-energy revenues the Districts received from basic customer service charges. In other words, under the plain language of RCW 54.28.020(1)(a), and in light of the definition of the term “gross revenue” set forth in RCW 54.28.011, is the basic customer service charge subject to privilege tax?

III.

COUNTER STATEMENT OF THE FACTS ON DEPARTMENT OF REVENUE’S APPEAL

Clark’s and Grays Harbor’s situations will be described separately below, since there are differences in the underlying facts for each District.

A. Clark Public Utility District.

Clark is a customer-owned utility providing electric and water services in Clark County, Washington. CP 218. As part of its electric business, Clark collects a monthly “basic service” customer charge from all electric customers. *Id.* The “basic service charge” revenues recover a portion of the costs that exist even if no electric energy is sold to the account. *Id.* The “basic service” charge does not have any associated variable energy value (i.e., kilowatt-hour (“kWh”) or demand). *Id.* The charge varies only by the allocation of ongoing fixed costs to each customer class (e.g., residential, general service/commercial, industrial, etc.). *Id.*¹

The following is a schedule of the “basic service” customer charges in effect during the periods covered by Clark’s refund claims, as approved by the Clark Board of Commissioners during the period listed:

January 1, 200 through July 31, 2001:

Residential and Small Farm Customers	\$ 6.40
General Service (no demand)	\$ 15.00
General Service (kilowatt and demand meter)	\$ 30.00
Industrial Service (kilowatt and demand meter)	\$ 100.00

¹ Clark’s billing statements to customers are itemized for the various separate charges. The charges are not, however, all for the sale of electric energy. A typical billing statement to a customer from Clark will consist of two principle items: (1) a “basic” service” charge; and (2) a kilowatt-hour charge. See CP 42-52. Where a customer purchases or uses no electric energy during a billing cycle there is no kWh charge, just the “basic service” charge. See CP 36-40. Clark also separately itemizes some of the various taxes imposed on these charges. See CP 36, 38-40, 42, 44-46, 52.

August 1, 2001 through December 31, 2004:

Residential and Small Farm Customers	\$ 6.40
General Service (no demand)	\$ 18.00
General Service (kilowatt and demand meter)	\$ 36.00
Industrial Service (kilowatt and demand meter)	\$ 120.00

CP 218.

Each year Clark adopts an annual budget. CP 218. The budget estimates the annual costs (fixed and variable) and all revenues from the sale of energy, revenues from the “basic service” customer charges and other miscellaneous revenues. *Id.* If the forecasts of revenue and expenses do not match up or provide an operating surplus the commission directs staff to complete a detailed revenue requirement and cost of service study. CP 218-19.

The cost of service study examines what it costs to serve each customer class. CP 219. The study separates variable costs associated with a customer’s consumption (kilowatt-hour energy costs and demand energy costs) and the fixed costs associated with the “basic service” charges. *Id.* Recommendations are made to the board of commissioners about the appropriate amount of the variable charges for energy and demand delivered to customers and the fixed amounts for the customer-billed monthly “basic service” charge. *Id.* Charges and rates for services are set to collect revenues sufficient to meet operating expenses, satisfy bond covenants, and fund capital programs. *Id.*

The Clark Board of Commissioners adopts customers rates including the monthly “basic service” charges after receiving recommendations from staff and holding public meetings. CP 219. The “basic service” charges are set by the commission after reviewing the annual budget and revenue requirements, and receiving the cost of service study analysis. *Id.*; see CP 19-34 (Clark Public Utility District Resolution No. 6177 adopted July 25, 2001, effective August 1, 2001).

Clark’s monthly “basic service” charges are not based upon the amount of electric energy delivered to the customer and do not recover any energy (i.e., kilowatt-hour or demand value) charges. CP 219. In other words, they are a defined source of revenue without any associated kilowatt-hour energy value. *Id.* The “basic service” charges are established in the revenue requirements and cost of service studies, are levied monthly, and are created to provide revenues to cover costs that continue to exist even if the utility does not sell any electricity. *Id.* Examples of these ongoing costs would be debt service, insurance, and some labor costs not related to the sale of electricity. *Id.* The monthly “basic service” charges are billed to all customers with connected or metered services, including those that do not use any electricity during the billing period. CP 219-220; see CP 36-40 (sample Clark Public Utility District billing statements where customers were billed for “basic service” charge and no electricity energy charge); see also CP 42-52 (sample Clark

Public Utility District billing statements where customers consumed electric energy and were billed for both the “basic service” charge and the kilowatt-hour charge).

As noted, Clark regularly bills the “basic service” charge to, and collects the charge from, customers who do not otherwise consume any electric energy during the billing period. CP 220. For example, 10,007 customer bills had the “basic service” charge only in the year 2004, and 9,785 customer bills included only the “basic service” charge in the year 2005. *Id.* These customers did not receive any electric energy during the billing period and so the customers did not get billed for any energy (kWh) charges. *Id.* Similarly, 5,196 general service customer bills in 2004, and 5,361 general service customer bills in 2005, included only the “basic service” charge and no energy or kWh charge. *Id.*; see CP 42-52.

During the years 2000 to 2004, Clark received revenues from “basic customer service” charges and has requested refunds of privilege tax paid on such revenues, as follows:

<u>Tax Year</u>	<u>Year Paid</u>	<u>Revenue from Basic Customer Service Charges</u>	<u>Refund</u>
2000	2001	\$ 13,682,645	\$ 292,808
2001	2002	\$ 13,517,672	\$ 289,278
2002	2003	\$ 14,201,594	\$ 303,914
2003	2004	\$ 14,570,945	\$ 311,818
2004	2005	\$ 14,946,628	\$ 319,858

CP 220; see CP 54-64 (Clark’s privilege tax annual report filed with the Department for the year 2002; from this report the Department generated a

bill on April 30, 2003 (CP 66-69), for the privilege taxes owed by Clark in year 2003).

B. Grays Harbor Public Utility District.

Grays Harbor is a customer-owned utility providing electricity to residents and businesses of Grays Harbor County, Washington. CP 213. As part of its business, Grays Harbor charges and collects a monthly “basic customer charge” from all customers. *Id.* The basic customer charge is a monthly charge to customers with no associated energy value. *Id.* It is charged regardless of whether customers consume any electricity or electric energy. *Id.* The basic customer charge is a cost recovery means to ensure a portion of fixed costs are recovered by Grays Harbor, since there are fixed costs associated with operating the utility that are present regardless of energy distributed or revenue received. *Id.*²

Grays Harbor has several classes of utility services and customers. CP 213. A breakdown of the basic customer charges by class, and for two of the time periods in this appeal, are as follows:

<u>10/2002—12/2005:</u>	
Residential	\$ 11.35
Small Commercial	\$ 13.60
Medium Commercial	\$ 22.60
Small Industrial	\$ 30.00

² Grays Harbor’s billing statements to customers are similar to Clark’s (*see* n. 1, *supra*), although they contain three primary charges to customers: (1) a “basic charge”; (2) an “energy” charge; and (3) a “demand” or minimum charge (*see* CP 143-47), instead of two. When a customer of Grays Harbor consumes no electricity during the billing cycle, the customer will be billed for the basic charge and the minimum charge. *See* CP 137-141, 148.

Large Commercial	\$ 79.20
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2000—9/2001:

Residential	\$ 6.00
Small General Service	\$ 7.50
Large General Service	\$ 10.00
Small Industrial	\$ 10.00
Large Industrial	\$ 30.00
Industrial (Unreg. Voltage)	\$ 30.00
Industrial General Service	\$ 30.00
Irrigation	\$ 5.00
Very Large Industrial	\$ 125.00

See CP 213-14 for a listing of Grays Harbor’s customer charges during all times covered by this appeal.

The Grays Harbor Board of Commissioners establishes the basic customer charges, and these charges are determined through cost of service studies. CP 214. These studies determine the true cost to serve each class of customer and costs are allocated to each customer class based on this study. *Id.* The study also determines the fixed costs associated with customer classes regardless of energy consumption. *Id.*

With the cost of service study information, Grays Harbor then performs a revenue requirements analysis. CP 214-15. This analysis reviews all sources of revenue and all costs, and charges and rates are then established to ensure revenues are sufficient to meet expenses, bond covenant requirements and revenue funded capital programs. CP 215; see CP 71-135 (Grays Harbor Public Utility District Resolution No. 3977 adopted June 24, 2002, setting basic service charges effective July 1,

2002, and Resolution No. 3999 revising rates adopted September 23, 2002, and effective October 1, 2002).

Grays Harbor regularly bills and collects basic customer service charges from electric customers who do not consume any electricity. CP 215. The following represents the total bills issued, per year, by Grays Harbor where utility customers were not charged for electric energy, because the District did not sell or deliver any electricity to those customers during the billing period:

<u>Year</u>	<u>Bills</u>
2001	50,515
2002	56,964
2003	57,609
2004	63,110
2005	58,593

CP 215; see CP 137-141 (sample Grays Harbor customer bills with basic service charges only and no kilowatt hour charge); see also CP 143-147 (sample Grays Harbor customer bills with both a basic charge and a kilowatt-hour charge). In turn, during the years 2000 to 2004, Grays Harbor received revenues from basic customer charges and has requested refunds of privilege tax paid on such revenues, as follows:

<u>Tax Year</u>	<u>Year Paid</u>	<u>Revenue From Basic Customer Service Charges</u>	<u>Refund</u>
2000	2001	\$ 3,553,414	\$ 76,043
2001	2002	\$ 4,975,477	\$ 106,475
2002	2003	\$ 5,527,424	\$ 73,675
2003	2004	\$ 5,496,175	\$ 118,287
2004	2005	\$ 5,643,157	\$ 120,763

CP 215.³

C. The Proceedings Below.

The Districts filed suit in Thurston County Superior Court on December 28, 2005, requesting a refund of the privilege taxes they paid in the years 2001 through 2005 based on revenues derived from basic customer service charges. CP 4-9. The Districts moved for summary judgment on October 31, 2006. CP 183-84. Following a hearing on the motion on October 5, 2007, the trial court issued a Letter Opinion on October 22, 2007. CP 805-809. The court agreed that the basic customer service charge was not subject to privilege tax and granted the Districts a refund of privilege taxes they paid on those revenues. *Id.* However, the court limited the refund period to three years, not five years, as sought by the Districts. CP 809. The trial court also reserved the issue of the amount of the refunds owed to each District for trial. *Id.*

Subsequently, the Districts and the Department agreed on the refund amounts for the three year period allowed by the trial court. An agreed order and judgment was entered with the court on January 18,

³ In the tax years 2003 and 2004, Grays Harbor deducted basic customer charges on its Annual Report to the Department, so it did not actually pay privilege tax on these revenues in the following years, 2004 and 2005. *See, e.g.*, CP 150-159 (Grays Harbor privilege tax report for the year 2004; page 6, section E of the report shows a deduction for basic customer charges). The Department subsequently assessed the privilege tax for these years on November 10, 2005 (CP 215; *see* CP 162 (Department's November 10, 2005 assessment)), which Grays Harbor paid on December 6, 2005 (CP 215; *see* CP 164-67). The refund amounts shown in the chart above include the privilege taxes that were ultimately paid by Grays Harbor in late 2005. CP 215-16.

2008. CP 810-19. Clark's refund totaled \$935,590 and Grays Harbor's was \$309,580. CP 811. Neither judgment amount accrued interest since the three-year refund statutes did not provide for the payment of interest on such refunds. *Id.* The Department filed a timely Notice of Appeal to this Court on January 31, 2008. CP 820-832. The Districts followed with a timely Notice of Cross-Appeal on February 13, 2008. CP 833-844.

IV.

CONSOLIDATED STATEMENT OF STANDARD OF REVIEW

The construction and interpretation of statutes are questions of law the Court reviews de novo under the error of law standard. See Whidbey General Hospital v. Department of Revenue, 143 Wn.App. 620, 627, 180 P.3d 796 (2008) (citing Health Ins. Pool v. Health Care Authority, 129 Wn.2d 504, 507, 919 P.2d 62 (1996)); see also Department of Ecology v. Campbell & Gwin L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (citing State v. Breazeale, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001); State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001)); Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621, 627, 869 P.2d 1034 (1994) (citations omitted). "When interpreting statutory language," the court's "goal is to carry out the Legislature's intent." Whidbey General Hospital, supra (citing Simpson Inv. Co. v. Dep't of Revenue, 141 Wn.2d 139, 148, 3 P.3d 741 (2000)). And, "[w]here a statute is unambiguous," the court determines "legislative intent from the statutory language alone."

Whidbey General Hospital, *supra* (citing Waste Mgmt. v. Wash. Util. & Transp. Comm., 123 Wn.2d 621, 629, 869 P.2d 1034 (1994)).

This case involves the interpretation of tax statutes codified in RCW Chapter 54.28. The trial court resolved this matter on a motion for summary judgment brought by the Districts. The court granted the Districts' motion in part and the entire summary judgment ruling is subject to de novo review by this Court. *See, e.g., Timberline Air Service, Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 311, 884 P.2d 920 (1994) (citing Rivett v. Tacoma, 123 Wash. 2d 573, 870 P.2d. 299 (1994)).

V.

ARGUMENT ON DEPARTMENT OF REVENUE'S APPEAL

A. **The Issue Presented—Are “Basic Customer Service Charges” Subject To Privilege Tax?—Involves the Application Of A Tax, And Any Doubt As To The Imposition Of That Tax Must Be Resolved In The Districts’ Favor.**

This case involves the interpretation and construction of the privilege tax statutes codified in RCW Chapter 54.28. It is not about a tax exemption, deduction, or credit statute, all of which are to be read strictly and narrowly against the taxpayer. *See, e.g., Simpson Investment Co. v. Department of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741 (2000) (citations omitted); Lacey Nursing Ctr., Inc. v. Dep’t of Revenue, 128 Wn.2d 40, 49, 905 P.2d 338 (1995). Instead, the question here involves tax-imposing statutes, which are to be interpreted in favor of the taxpayer, *see e.g., Duwamish Warehouse Co. v. Hoppe*, 102 Wn.2d 249, 254, 684 P.2d 703

(1984) (citations omitted); State Dep't of Rev. v. Hoppe, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973) (citations omitted), with “any doubt as to the meaning of a tax statute . . . construed against the taxing power.” First American Title Ins. Co. v. Department of Revenue, 144 Wn.2d 300, 303, 27 P.3d 604 (2001) (emphasis added) (citing Duwamish Warehouse Co. v. Hoppe, *supra*); see Weyerhauser Co. v. Dep't of Revenue, 106 Wn.2d 557, 566, 723 P.2d 1141 (1986) (citations omitted); Shurgard Mini-Storage of Tumwater v. Dep't of Revenue, 40 Wn.App. 721, 727, 700 P.2d 1176 (1985) (citations omitted); MAC Amusement Co. v. Dep't of Revenue, 95 Wn.2d 963, 966, 633 P.2d 68 (1981) (citations omitted); see also 3A Norman J. Singer, Sutherland Stat. Const., § 66.1 (6th ed. 2003); Estate of Hemphill v. Dep't of Revenue, 153 Wn.2d 544, 105 P.3d 391 (2005); AgriLink Foods, Inc. v. Dep't of Revenue, 153 Wn.2d 392, 395, 399 n.1, 103 P.3d 1226 (2005) (citations omitted).

Put another way: In the field of taxation, there are two alternative rules of statutory interpretation and construction. In a tax exemption case, any ambiguity in the statute favors the Department; in a tax incidence case, such ambiguity favors the taxpayer. Because this is a tax incidence case, the issue before the Court is whether the Districts' plain reading of the statute is reasonable; if so, the Districts should prevail. The

Department, however, fails to acknowledge in any way that this is a tax incidence case.⁴

B. The Plain Meaning Rule Of Statutory Construction Controls Here, And To The Detriment Of The Department's Appeal.

The language of the statute is conceptually straightforward. The privilege tax is imposed on “the gross revenues derived . . . from the sale of all electric energy.” RCW 54.28.020(1)(a). So, too, is the language in the statute defining the term “gross revenue,” which means “the amount received from the sale of electric energy.” RCW 54.28.011. Therefore, in resolving this dispute, this Court should need nothing more than apply the plain meaning rule:

We look to the statute’s plain language in order to fulfill our obligation and to give effect to legislative intent. Lacey Nursing Ctr., Inc. v. Dep’t of Revenue, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). When faced with an unambiguous statute, we derive the legislature’s intent from the plain language alone. Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm’n, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994).

Asche v. Bloomquist, 132 Wn.App. 784, 790, 133 P.3d 475 (2006).

⁴ It is distressing to see the Department once again failing to acknowledge forthrightly that there is this vital distinction under Washington tax law between incidence cases and exemption cases, and also failing to acknowledge that in an incidence case the taxpayer always gets the benefit of any doubt. The focal inquiry in tax incidence cases is two-fold: First, does the statute have a plain meaning? If it does, the plain language of the statute controls. Second, if the statute is ambiguous or susceptible to more than one meaning but the taxpayer’s interpretation is reasonable, then the taxpayer is entitled to prevail. This “default rule” is very strong in this state, yet, the Department fails to even acknowledge its existence, let alone that it is the guiding principle in this case. If this case were about a tax deduction or exemption, the Department would undoubtedly be trumpeting the rule that benefits the state in those cases, i.e., the deduction or exemption statute must be interpreted strictly and narrowly against the taxpayer and in favor of the Department. But here, in an incidence case where the default rule is in favor of the taxpayer, the Department is silent.

If there is one thing *abundantly* clear from reading RCW 54.28.020(1)(a) and RCW 54.28.011 together, it is that the statutory measure of the privilege tax includes only amounts derived from the sale of the fungible commodity “electric energy” or “electricity.” In fact, the Legislature defined this measure of tax almost to the point of redundancy, first in the imposing statute, RCW 54.28.020(1)(a) (“gross revenues derived . . . from the sale of all electric energy”); then in the statute that actually defines the term “gross revenue,” RCW 54.28.011 (“the amount received from the sale of electric energy”); and finally in the definition of the term “distributes to consumers,” RCW 54.28.010(3) (“the sale of electric energy to ultimate consumers thereof”).

The Department fails to come to grips with this statutory language. Indeed, the words of the statute are the heart and soul of this dispute, yet the Department fails to address those words in any meaningful way.

1. The Statutory Definition Of “Gross Revenue” Controls.

The Legislature has provided a specific statutory definition for the RCW 54.28.020(1)(a) privilege tax. This tax is imposed on the “gross revenues derived . . . from the sale of all electric energy[,]” *id.*, and the Legislature has defined the term “gross revenue” to mean “the amount received from the sale of electric energy.” RCW 54.28.011. This “legislative definition prevails over a dictionary definition or common understanding of any given term.” In re F.D. Processing, Inc., 119 Wn.2d

452, 458, 832 P.2d 1303 (1992) (citing American Legion Post 32 v. Walla Walla, 116 Wn.2d 1, 8, 802 P.2d 784 (1991); State v. Hickok, 39 Wn.App. 664, 667, 695 P.2d 136 (1985); 1A N. Singer, Statutory Construction §§ 20.08, 27.02 (4th ed. 1985)). This fact is critical in this case, because the Department’s entire brief is an exercise in evading the precise language of the definition of “gross revenue” (RCW 54.28.011) employed by the Legislature in the privilege tax. Instead, what is presented throughout the Department’s argument is a repeated attempt to rewrite or recharacterize the language of the statute, rather than address the specific statutory language itself.

Here are some of the ways the Department attempts to rewrite the statutory imposition language, “gross revenues derived . . . from the sale of . . . electric energy” (RCW 54.28.020(1)(a)), and the definition of the term “gross revenue,” “the amount received from the sale of electric energy” (RCW 54.28.011):

- “[C]ustomers pay the Districts a ‘basic service charge’ in order to receive electricity” (Brief of Appellant (“Department’s Brief”) at 9).
- “[R]evenue generated in the business of providing electricity” (*id.* at 10).
- “The Districts collect revenue from all of their customers by providing electrical service which includes the component of a basic

charge and therefore should be subject to tax as part of the Districts' gross revenues" (*id.* at 12).

- "[T]he Legislature intended to tax all gross revenues and not just the actual use of electricity" (*id.* at 14).

- "[S]ince the amount of the basic charge is based on the amount of electric energy the customer uses, these costs are associated with the cost of providing electrical energy" (*id.* at 15).

- "The 'basic customer charge' is for the service of providing and distributing electricity to its customers" (*id.* at 16).

- "The . . . 'basic service charge' is intertwined with the sale of electric energy" (*id.* at 19).

- "[T]he Districts provide electric service to . . . customers and charge the 'basic service charge' for the sale of electric energy" (*id.* at 22).

- "[T]he . . . 'basic service charge' should be included as gross revenue[,] recognizing an intent to tax the entire sale of electric energy." (*id.* at 24).

- "[C]harges for electrical service, no matter what the label applied by the utility should be included as gross revenue subject to a privilege tax." (*id.* at 26).

- The Districts “cannot avoid the public utility privilege tax by claiming the ‘basic customer charge’ is not the sale of electricity when they are providing electrical services to their customers.” (*id.* at 27).

The Districts acknowledge that the basic service charge is paid (as one of the Department’s many phrasings would have it) “in order to receive electricity.” But, while this may be true, the privilege tax is not a tax on the right or ability to receive electricity; instead, it is a tax on the actual sale of electric energy. Nor is the privilege tax a tax on “the business of providing electricity”; again, the tax is on the amount received from the sale of electric energy.

The basic customer charge also is not (as the Department suggests) “based on the amount of electric energy the customer uses.” Nor does the basic service charge cover all the costs “associated with the cost of providing electric energy.” As the undisputed facts disclose, the Districts impose charges for fixed and variable costs, and the basic customer charge is imposed to offset fixed costs. The provision of electricity is a variable cost. Thus, the kWh charge is designed to recover the costs “associated with the cost of providing electric energy,” not the basic service charge, which covers fixed costs.⁵

⁵ The Department states that “[e]ach District collects revenue from its customers for the use of the electricity the Districts provide.” Department’s Brief at 3. This statement is incomplete and misleading. The Districts do not allow customers to “use” electricity. Instead, they “sell” electricity to customers. Electricity is the flow of electric power created from the conversion of primary sources of energy, such as coal, natural gas, oil,
Footnote continued on next page.

Ultimately, the Department disputes the Districts' position that revenues from their basic customer charges are not revenues from the sale of electric energy by arguing that "these are merely labels." Department's Brief at 12. Merely labels? No, these are not just labels; these are the Legislature's words, which must be given their plain meaning. Because the Department did not examine the statutory language in detail, the Districts will do so now.

2. **The Words Used By The Legislature In RCW 54.28.011 And 54.28.020(1)(a) Support The Districts' Reading Of The Statutes.**

RCW 54.28.020(1)(a) imposes the privilege tax. It says a two percent tax (plus surtax, see RCW 54.28.020(2)) is imposed on "the gross revenues derived by the district from the sale of all electric energy." The first question is, what does "gross revenue" mean? It is not necessary to go very far because (as stated) the Legislature provided a controlling

nuclear, water (hydro power), sun (solar power), geothermal and wind into this secondary source, electric current. Electricity flows in circuits (wires), from the power generator to the consumer. Some of the power is lost in transit; the remainder is in the line at all times or it is consumed by the end user. When the circuit is closed—e.g., the customer turns on a light switch—the electricity flows and the electric energy is consumed and deemed sold to the user. See <http://www.eia.doe.gov/kids/energyfacts/sources/electricity.html>. So, electric energy is not just "used," as if it can be simply rented and then given back to the power company, and as the Department seems to imply. The Department further hints that the Districts received revenue from customers only from the sale of electricity. As noted above, this is not true; the Districts received revenues from more sources than the sale of electric energy and basic customer service charges. Other sources of revenue include charges to customers for the installation of equipment and facilities, such as lines and meters (see CP 218), as well as late charges, power diversion fees, joint use fees, and house move fees, all of which do not incur privilege tax. See CP 612, 616. It is therefore misleading to suggest that the Districts collect revenues only from the "use of electricity."

statutory definition. Under that definition, “gross revenue” means “the amount received from the sale of electric energy.” RCW 54.28.011.

There is no dispute that when the Districts receive payment for basic customer service charges, those are “amounts received”—but are they “from the sale of electric energy”? The privilege tax law itself does not define the word “sale” nor the term “electric energy.” Therefore, it is appropriate to look to the dictionary to determine the meaning of these words and terms. See State v. McDougal, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992).

The word “sale” means the “exchange of property or services for a determined amount of money or its equivalent.” The American Heritage Dictionary of the English Language, New College Edition (1979) at 1144. The basic customer service charge, however, plainly is not in exchange for any property or services. Customers receive no property or services in exchange for payment of the basic customer charge. Instead, the charge is imposed for the right to receive electric energy, and not for the energy itself, as the record conclusively establishes:

The basic charge is a cost recovery mechanism. There is a cost associated with each service location determined through a cost of service study. This charge has nothing to do with the amount of electricity used, only the costs associated with the ability to receive electric energy. (CP 612.)

The basic monthly fee/charge is assessed to all customers every month, whether any deliveries of electricity occur. It is not assessed based upon how many kilowatt hours could be or are delivered. With Clark PUD the fee has no energy value associated

with it. A more simplified description would be to describe the “Basic Customer Charge” as the fee collected for access to receive the delivery of electricity. (CP 615.)

That the customer is required to pay for something it may receive is payment in exchange for neither a product nor a service. The basic customer charge thus does not satisfy the dictionary definition of “sale.”

The word “sale” is also defined in the Revenue Act (see RCW 82.04.040), which provides a definition for the word for tax purposes. Here, the word “sale” is defined to mean “any transfer of the ownership of, title to, or possession of property for a valuable consideration.” *Id.* Again, the basic customer service charge fails this definition because there is no property transferred.

The second and last requirement of the definition of “gross revenue” in RCW 54.28.011 is that the sale must be in exchange for “electric energy.” Unlike the word “sale,” this term does not appear to have a common dictionary definition.⁶ So, the words “electric” and “energy” in the term “electric energy” must be defined separately. The word “electric” means “[o]f, pertaining to, producing, derived from, produced, powered, or operated by electricity.” American Heritage Dictionary, at 420. The word “energy” means the “work that a physical system is capable of doing in changing from its actual state to a specified

⁶ The terms “electric charge” and “electric current” are defined by reference to the word “electricity.” American Heritage Dictionary at 420. This latter word means “[e]lectric current used or regarded as a source of power.” *Id.*

reference state.” *Id.* at 432. Taken together, the term “electric energy” essentially means electricity that is part of a physical system that is changing in character. A customer, however, does not receive electricity that is part of the electric system in exchange for the basic customer charge. In short, there is nothing in the definition of “gross revenue” that even hints at the Legislature intending to include anything other than the commodity electricity within the measure of the privilege tax.⁷

The conclusion that the term “sale of electric energy” cannot possibly mean to include revenues from a standby-type charge like a basic

⁷ There are numerous Washington statutes that use the term “electricity” and the term “electric energy” although mostly without definition. A few statutes provide definitions of closely related terms and implicit definitions of the terms themselves. *See, e.g.* RCW 19.29A.010(13); RCW 43.52.250; RCW 43.21G.020(2); RCW 43.21F.025(1). Nevertheless, these various statutory uses of “electricity,” “electric energy” and related terms, do support the proposition that the term “electric energy,” standing alone, refers to the electricity commodity itself and not ancillary services provided in connection with the supply of the commodity. *See* CP 224. Indeed, a statute directly on point provides that “electricity means electric energy measured in kilowatt hours, or electric capacity measured in kilowatts, or both.” RCW 19.29A.010(13) (RCW Chapter governing “Consumers of Electricity”). Another statute defines “electrical energy” as “electric energy produced by any means including water power, steam power, nuclear power, and conservation.” RCW 43.52.250 (RCW Chapter governing “Operating Agencies”). Yet another statute defines “energy” as “any of the following, individually or in combination: Petroleum fuels; other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material, or electricity.” RCW 43.21G.020(2) (RCW Chapter governing “Energy Supply Emergencies, Alerts”); *see* RCW 43.21F.025 (RCW Chapter governing “State Energy Office”) (utilizing a similar definition). In keeping with a definition of “electricity” focused on its nature as a commodity, two statutes refer to “electricity” as a thing that is produced. RCW 19.29A.090 (RCW Chapter governing “Consumers of Electricity”) (stating that “‘qualified alternative energy resource’ means the electricity produced from generation facilities...”); RCW 43.52.595 (RCW Chapter governing “Operating Agencies”) (stating that contracts for electric power “may include the purchase of capability of the projects to produce electricity...”). Finally, RCW 54.16.040 titled “Electric energy” and located in the same title (RCW 54) as the privilege tax chapter (RCW 54.28) states in part that a public utility district “may purchase, within or without its limits, electric current for sale and distribution within or without its limits,” again underscoring the commodity nature of “electric current”, which under the dictionary definition, means electricity. *See* CP 223-24.

customer service charge is further buttressed by parsing the tax imposing statute itself. Again, RCW 54.28.020(1)(a) applies the privilege tax to “gross revenues derived . . . from the sale of all electric energy” (emphasis added). The word “sale” and the terms “gross revenue” and “electric energy” have previously been discussed. The last word to examine is “derived.” The American Heritage Dictionary states: “**derive . . . v.** [including]-**rived** . . . 1. To obtain or receive from a source.” Supra, 356. This dictionary definition of the word “derived” as used in RCW 54.28.020(1)(a) further supports the Districts’ interpretation. The “source” here is the “sale of electric energy,” i.e., of electricity. Because the basic customer service charge is not obtained or received from the sale of electricity it is not “derived” therefrom. As the undisputed facts disclosed, this charge applies even if no electricity is sold; the basic service charge is imposed on customers who may buy electricity due to their status of being hooked up to the distribution system.

The Department’s argument would have more appeal if the Legislature had used the term “related to” instead of the word “from” in RCW 54.28.020(1)(a).⁸ When comparing the term “related to” to the

⁸ The expansive quality of “related to” is well-recognized in statutory interpretation jurisprudence. See, e.g., Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 97, 103 S. Ct. 2890, 77 L.Ed.2d 490 (1983) (“relate[d] to” means “it has a connection with or reference to” (citations omitted); District of Columbia v. Greater Washington Board of Trade, 506 U.S. 125, 129, 113 S. Ct. 580, 121 L.Ed.2d 513 (1992) (“the ordinary meaning of ‘relate[d] to’ . . . gives effect to the ‘deliberately expansive’ language chosen” (citations omitted)); and In re Estate of Egelhoff, 139 Wn.2d 557, 574, 989 P.2d 80 (1999), all recognizing the

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words “derived” and “from,” the latter are clearly words of limitation. But the Legislature did not use the phrase “related to” (although the Court would not know it by reading the Department’s Brief).

In short, if the Department is correct in its expansive interpretation of RCW 54.28.011 and 54.28.020(1)(a), the Legislature would most certainly have written those statutes differently. Thus, under the Department’s reading of the statute, RCW 54.28.020(1)(a) should have stated:

Two percent of the gross revenues derived by the district related to the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district[.]

Here, the words “related to” are substituted for the actual word “from” in the statute. And this substitution clearly changes the meaning of the statute. Any revenues “related to” the sale of electric energy—a concept that surely would include basic customer charges—would be taxable. But, the Legislature did not choose to use the “related to” language.

The Legislature could have similarly chosen to use the same substituted language in defining “gross revenue” (RCW 54.28.011) to accomplish the result the Department seeks here. Under the Department’s argument, RCW 54.28.011 should have read:

“Gross revenue” shall mean the amount received related to the sale of electric energy . . .

breadth of the term (e.g., as used in the preemption clause of the Employee Retirement Income Security Act (ERISA)).

Again, when the term “related to” is substituted for the word “from” it changes the meaning—and the measure of the privilege tax—immensely. But again, the Legislature did not choose the expansive wording that would support the Department’s interpretation.

As noted above, the term “distributes to consumers” also appears in RCW 54.28.020(1)(a). This term is defined in the privilege tax chapter to mean “the sale of electric energy to ultimate consumers.” RCW 54.28.010(3). A parsing of this term shows that, here, the Legislature used the active verb “distributes.” The Districts are not distributing electric energy—or anything else for that matter—to consumers when customers are merely passively hooked up to the electric system and pay for that right via the basic service charge. While it is true that the consumers have the potential to have electric energy distributed to them, the term “distributes to consumers” is active, not passive, further evidencing that the Legislature intended the actual sale of electricity to be the event that triggers this tax.⁹

⁹ The Districts believe the legislative intent in these statutes is plain and unambiguous. But, setting aside for the moment the plain and unambiguous mix of words present here, these are also words that have to be understood as terms of art in the electric energy industry. And how the industry views the questions raised in this appeal are answered by the testimony of the Districts’ expert, Mr. Donovan. See CP 221-25. In part, he stated: “. . . it would be inconsistent with electric industry practice to consider that the value of the sale of electric energy to include any fixed components. Accordingly the value of the sale of electric energy should only include the variable cost components based on the consumers’ use and as measured in kilowatt-hours.” CP 225. Mr. Donovan’s testimony was not disputed.

The significance of this legislative definition of the term “gross revenue” (RCW 54.28.011)—which narrows the scope to just revenues from the sale of electric energy—is that the Legislature wanted to take out of play the ordinarily broad notion of gross revenues. The term “gross revenues” would generally include all revenues. But, in RCW 54.28.011 the Legislature wanted to make it clear that the privilege tax statutory definition of “gross revenue” was a narrower concept to include only revenues from the actual sale and consumption of electricity.¹⁰ The scope of this tax, by its own definition, would not include charges related to just being hooked up to the system so that a person may draw electricity at some point. For this is not the Public Utility Tax (“PUT”) imposed by Chapter 82.16 RCW, a tax that is significantly broader in scope than the privilege tax, as the Public Utility District No. 3 of Mason County v. State, 71 Wn.2d 211, 427 P.2d 713 (1967) (“Mason County”) case confirms.¹¹

¹⁰ While this appeal has been pending before the Court, the Department recently circulated a draft bill that it intends to have introduced to the 2009 Legislature. This bill, a copy of which plus amendment are attached as Appendix 1, would revise the definition of “gross revenue” (RCW 54.28.011) consistent with the Department’s legal position in this case. The Districts believe the amendment to the statute proposed by the Department is tantamount to a concession that the Districts’ interpretation is correct.

¹¹ The Department also argues that “if the Districts’ statutory construction were to stand, [they] could determine their taxes by simply assigning all of their costs, fixed and variable, to their basic charge.” Department’s Brief at 17. In other words, the Department claims the Districts could assign all costs to the basic service charge and avoid the privilege tax altogether. This argument is nonsense. The Districts’ basic service charges are nominal assessments to customers and are in no way an attempt to circumvent the tax or assign costs to the basic charge that are not otherwise related to ongoing fixed costs of each customer class. Nor has the Department even alleged that the Districts are inappropriately assigning excess costs to the basic service charge under the facts of this case. Simply stated, the purported circumvention of tax liability through the

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C. **The Decision Of The Supreme Court In MASON COUNTY Is Fatal To The Department's Argument.**

In Mason County, the tax at issue was the PUT. Mason County PUD had a practice of passing the city of Shelton privilege taxes on to its customers by billing the taxes as a separate item on customers' invoices, after compilation of charges for electric energy or other services. Mason County at 212. The PUD did not include the receipts for these taxes in its reported gross income to the State Tax Commission (predecessor agency to the Department of Revenue), for purposes of the PUT imposed by RCW 82.16. *Id.* In an administrative appeal, the Tax Commission ruled that Mason County PUD's practice of not reporting the income from the recoupment of the city privilege taxes for purposes of computing the PUT due was improper and issued a deficiency assessment against the district. *Id.*

The trial court upheld the assessment and the question presented to the Supreme Court was whether the tax receipts from the separately itemized city privilege taxes "constituted 'gross income' of the district subject to taxation within the purview of RCW 82.16, the public utility statute." *Id.* The PUT chapter (RCW 82.16) contains a specific, broad

assignment of all costs to a basic service fee is not before this Court. If such facts are ever found by the Department it may be addressed in a case before another court or, more appropriately, by the Legislature through an amendment to the statutes. See Weyerhaeuser Co. v. Department of Revenue, 106 Wn.2d 557, 566, 723 P.2d 1141 (1986).

definition of the term “gross income” that is unlike the narrow definition of “gross revenue” in RCW 54.28.011, and which provides as follows:

“Gross income” means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or 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 . . . [Court’s italics.]

Mason County at 213 (quoting RCW 82.16.010(12)) (underscored emphasis and bracketed inclusion added).

In its decision, the Supreme Court summarized Mason County PUD’s argument as follows:

. . . the tax receipts collected from its customers are not derived from the sale of electricity (RCW 54.28.020) or from gross revenues derived by the district from the performance of its public service, including operations incidental thereto (RCW 82.16.010, *infra*). Its argument is that since only revenue or income from the generation, distribution and sale of electric energy was contemplated as the measure of “gross income,” the district properly considered the collected tax receipts as an item separate from operating revenue; and correctly paid its additional 3.6 per cent public utility tax without including these tax receipts in its reported “gross income.”

Mason County, at 212-13 (emphasis added). The Supreme Court rejected all of those arguments, and compared the measure of the privilege tax, “gross revenue,” with the measure of the PUT, as follows:

We think the district has misconstrued the difference between the measure of the 1 per cent and 2 per cent [privilege] taxes, defined in RCW 54.28.011 as “Gross revenue” from the sale of electric energy, and the measure of the additional 3.6 per cent tax defined in RCW 82.16.010(12) as “Gross income” from the performance

of the public service, upon which this order of the Tax Commission was based. The definition of “Gross revenue” appears in RCW 54.28.011 as follows:

“Gross revenue” shall mean the amount received from the sale of electric energy *excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070*. (Italics ours.)

The determination whether tax receipts collected and remitted to the taxing source under RCW 54.28 (the 2 per cent state and 1 per cent city of Shelton privilege taxes) are to be included as “gross income” in measuring the 3.6 per cent [sic] public utility tax, is not resolved by this definition of “gross revenue.” The measure, there defined, only has application in determining taxes payable under RCW 54.28.020 and RCW 54.28.070, which authorize the 2 per cent state and 1 per cent city of Shelton privilege taxes, a question not material to this appeal.

The real question is whether these receipts are included in the definition of “Gross income” under RCW 82.16.010(12), . . .

It is this definition that governs the income upon which the 3.6 per cent public utility tax is to be measured. By the express terms of this statute . . . no deduction for taxes paid or accrued is allowable in determining “gross income,” since these expenses are treated as part of the cost of doing business as a franchised public utility. Therefore, the district, by billing the two taxes in question to its customers (either separately or buried in the total charge for services), adds to its “gross income” and cannot thereafter make deductions therefrom in measuring its tax liability under the public utility tax, RCW 82.16.

Mason County at 213-14 (emphasis and bracketed inclusions added).

Here, the Department attempts to interpret the privilege tax imposed upon the Districts in a manner similar to Mason County PUD’s attempted interpretation of the PUT—i.e., by misconstruing the measure of the applicable tax—only in reverse. Mason County PUD argued that the measure of the PUT was income from the sale of electric energy only.

The Supreme Court rejected that argument based on the very broad measure of the PUT—“value proceeding or accruing” from engaging in a public service business (RCW 82.16.010(12)). Fast forward 40 years and the Department now believes the measure of the privilege tax is similar to the broad measure of the PUT—“revenue generated from the business of providing electricity” or “for the service of providing and distributing electricity to its customers.” Department’s Brief at 10, 16. But the measure of the privilege tax is much narrower—“the amount received from the sale of electric energy” (RCW 54.28.011)—as correctly noted by the Supreme Court in Mason County. While revenues collected by the Districts from basic customer service charges may be subject to PUT—because they clearly are “value proceeding or accruing” from conducting a public service business (RCW 82.16.010(12))—such revenues are not subject to privilege tax. The definition of “gross revenue” (RCW 54.28.011) for privilege tax purposes limits that tax to amounts received from the actual sale of electric energy. By its own terms this definition excludes basic customer service charges, because they do not constitute revenues from the comity sale of electricity.

The former Tax Commission (the direct predecessor to the Department) recognized at the time of the Mason County appeal that the statutory definitions of “gross income” for PUT purposes (chapter 82.16 RCW) and “gross revenue” for privilege tax purposes (chapter 54.28

RCW) were different. In its brief to the Supreme Court, the Tax Commission argued:

It is interesting to note that RCW 54.28.011 provides:

“Gross revenue” shall mean the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.

The statute defining gross income for purposes of chapter 82.16 RCW expresses just the opposite intent.

See Appendix 2 (emphasis added).¹²

In Mason County, the Tax Commission explicitly compared the broad measure of the PUT to “the opposite” measure of the privilege tax. That “opposite” measure constitutes the more narrow privilege tax definition of “amount received from the sale of electric energy.” RCW 54.28.011. Now, 40 years later, the Department wants to ignore the very comparison it advocated for in the Mason County case. The Department argues today for a broad, PUT-like definition, like “gross income” found in RCW 82.16.010(12), as the measure of the privilege tax. RCW 54.28.011, however, does not support such an interpretation.

The decision in Mason County is fatal to the Department’s argument here. RCW 54.28.011 is the definition upon which the privilege tax is to be measured. By its plain and unambiguous language, amounts

¹² Page 6 of the Tax Commission’s Brief (Exhibit M to the Declaration of George Mastrodonato, CP 172-180) was inadvertently left out of the copy of the exhibits filed with the trial court. A complete copy of the brief is attached as Appendix 2, including the missing page 6.

received for services or charges other than the actual “sale of electric energy” are not part of the “gross revenues” subject to the tax. The privilege tax is not measured by the gross or total income—the value proceeding or accruing—of a district, as is the PUT. Instead, the privilege tax is measured by one stream of revenues—“the amount received from the sale of electric energy” (RCW 54.28.011). Since the basic customer service charges do not constitute charges for electric energy—in fact, thousands of customers of the Districts are billed the basic charge each year without receiving any electric energy during the billing period (see CP 215, 220)—such amounts cannot be included within the measure of the privilege tax under RCW 54.28.020(1)(a).

D. The Department’s Explanation Of What The Legislature Intended When It Enacted The Privilege Tax Law Conflicts With The Plain Language Of The Statutes.

The Department contends that, in imposing the privilege tax, the “purpose and intent of the legislature is to tax the entire operation of the District” (Department’s Brief at 9) and the tax “is designed to tax all of the operating property of the public utility district.” *Id.* at 9. The Department cites RCW 84.12 as authority for this contention. *Id.* at 8. RCW 84.12, however, has nothing to do with the privilege tax; instead, RCW 84.12 addresses property taxes imposed on certain defined “public utilities.”

While the privilege tax is often referred to as an “in lieu of” property tax,¹³ it is not in fact a property tax. It is an excise tax. There is also no reference to RCW 84.12 in RCW 54.28, and no reference to RCW 54.28 in RCW 84.12. Thus, these two statutes have nothing to do with each other. Indeed, they are not even in the same Title of the RCWs. The Department cannot point to any authority for the proposition that the privilege tax “is designed to tax all of the operating property” of a public utility district, other than its own self-serving “see RCW 84.12 (assessment and taxation of public utilities)”. Department’s Brief at 8.

That the privilege tax is an excise tax and not a property tax is apparent based on a complete reading of RCW 54.28.020(1):

There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.¹⁴

¹³ See K. Billington, *People, Politics & Public Power* (1988) at 132 (the privilege tax is “a gross revenue tax established in the early 1940s that the PUDs would pay in lieu of the property tax private companies had paid on facilities the PUDs took over from them”).

¹⁴ A surtax to the rates set out in (a) through (c) is imposed under RCW 54.28.020(2). In addition, a fourth privilege tax is imposed under RCW 54.28.025. This tax is levied and collected:

Footnote continued on next page.

See High Tide Seafoods v. State, 106 Wn.2d 695, 699, 725 P.2d 411 (1986) (a property tax is a tax on things tangible or intangible and an excise tax is a tax on the right to use or transfer things) (citing Black v. State, 67 Wn.2d 97, 99, 406 P.2d 761 (1965) (“[T]he obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand, as in the case of a property tax, is lacking”) (quoting 1 T. Cooley, *Taxation* § 46, at 132 (4th ed. 1924)).

It is clear from reading RCW 54.28.020(1) and 54.28.025(1) that the measure of the various privilege taxes are “gross revenues” from the sale of electric energy (subpart(a)), “the first four mills per kilowatt-hour of wholesale value” of self-generated energy sold to consumers (subpart (b)), “the first four mills per kilowatt-hour of revenue” from self-generated energy that is resold (subpart(c)), or the “wholesale value of energy produced” (RCW 54.28.025(1)). There is nothing in any of these statutes—and RCW 54.28.020(1)(a) in particular—to suggest that the privilege taxes are “designed to tax all of the operating property” of the

. . . from every district operating a thermal electric generating facility . . . having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation . . . a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale . . .

RCW 54.28.025(1). A surtax applies to this tax, as well. See RCW 54.28.025(2).

Districts or that the Legislature intended “to tax the entire operation” of the Districts. Department’s Brief at 8, 9. Arguably, this may be the consequence or result when the various taxes are considered together, but not individually, and especially not RCW 54.28.020(1)(a) standing alone. Rather, each of these excise taxes target a specific stream of revenues for taxation. Even if the privilege tax is considered a property tax, which it clearly is not, these various privilege taxes simply are not comparable to taxing “all of the operating property” or “the entire operations” of the Districts, and the Department mischaracterizes the scope and intent of the tax when it claims otherwise.¹⁵

The Department states that the Districts’ “rate schedules demonstrate that the ‘basic service charge’ is an integral component of the Districts’ ‘energy charge’”. Department Brief at 10. This simply is not true, and one has to look no farther than the Department’s example (see CP 22; Appendix C to Department’s Brief) to show it is not true. At the bottom of CP 22, Clark’s basic charge and the energy charge are listed separately. How, then, could the basic charge be “an integral component” of the energy charge? The same is true with respect to Grays Harbor. The Department points to CP 73 (Appendix D to Department’s Brief) for the

¹⁵ As shown above, there are actually four different privilege taxes imposed under RCW 54.28. This case deals only with the tax imposed under RCW 54.28.020(1)(a). If this tax was intended by the Legislature “to tax the entire operation” of the Districts, as claimed by the Department, the other three privilege taxes would be redundant and unnecessary.

proposition that “the rate charge shall be the sum of the customer charge and the energy charge.” Department’s Brief at 11, quoting CP 73. But again, the Grays Harbor Schedule of Rates shows the charges separately listed (CP 73), negating any conclusion that the customer charge is “an integral component” of the energy charge.

The Department also argues that “the Districts charge different ‘basic customer charges’ depending on the nature of the customer, i.e., residential or industrial, and the demands the customer makes on the district[s] for the customer’s electricity needs from the District[s].” Department’s Brief at 11. Even assuming this is correct, it makes no difference. The privilege tax at issue is not imposed on “the demands the customer makes on the District”; it is imposed on the “sale of electric energy” (RCW 54.28.011).

The Department next addresses the three separate privilege taxes imposed by RCW 54.28.020(1):

- (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district;
- (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district;
- (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

The Department contends that “[t]hese last two components specifically relate to the kilowatt hour charge for energy, while the first component broadly includes all of the revenue from selling electricity” and concludes that, “if the Legislature had intended to tax only the actual kilowatt hours of electricity consumed by customers at the rate of two percent, it would have constructed the statute in such fashion.” See Department’s Brief at 13, citing Simpson Inv. Co. v. Department of Revenue, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (citations omitted) for the proposition that “different words used in the same statute have different meaning.” The Department misconstrues and misinterprets the different privilege taxes, as well as their statutory measure.

The measure of the subsection (a) privilege tax is “gross revenues derived . . . from the sale of all electric energy . . . distribute[d] to consumers” (emphasis added). The measure of the subsection (b) privilege tax is “the first four mills per kilowatt-hour of wholesale value of self-generated [electric] energy” (emphasis and bracketed inclusions added), while the subsection (c) privilege tax is measured by “the first four mills per kilowatt-hour of revenue . . . from the sale of self-generated [electric] energy for resale” (emphasis and bracketed inclusions added).

Thus, all three privilege taxes are measured by or on “electric energy” or “energy.” The fact that the words “kilowatt-hour” appear in the subsection (b) and (c) privilege taxes does not mean that the

Legislature intended a different measure of tax. Each privilege tax is measured by the sale (in the case of subsections (a) and c)) or value (in the case of subsection (b)) of electric energy and those are the key words or terms, not the words kilowatt hours. In addition, “mills per kilowatt-hour” or “mill/kWh” is merely a common method of pricing electricity. See <http://cancerweb.ncl.ac.uk/omd>. Thus, the subsection (b) and (c) privilege taxes simply do not “relate to the kilowatt hour charge for energy,” as suggested by the Department.

The Department also argues that “the Legislature over the years has contemplated changing the method of taxing electric businesses from gross revenues to taxing the amount of kilowatt hours transmitted.” Department’s Brief at 13. The Department then addresses various bills introduced to the Legislature from 2001 to 2006. See Department’s Brief at 13-14.¹⁶ These bills, however, were proposals, and they all admittedly failed. They shed no light on the dispute present in this case.

Attached to this brief are copies of the actual bills introduced in the years 2001-2006. House Bill 1007, introduced in 2001, would have repealed the privilege tax in its entirety. See Appendix 3. House Bill 1207, also introduced in 2001, would likewise have repealed the privilege tax. See Appendix 4. The original HB 1207 was later amended during the

¹⁶ The Department attached the legislative bill summaries to its brief. See Department’s Brief, Appendix E-H. The Department did not attach the actual bills.

legislative session, but even Substitute House Bill 1207 would have left the privilege tax intact. See, Appendix 5. House Bill 1316, introduced in 2003, would have amended the privilege tax and kept the RCW 54.28.020(1)(a) privilege tax essentially as is except to raise the rate and clarify the definition. See Appendix 6. It would also have left the key language “gross revenues derived . . . from the sale of all electric energy” in RCW 54.28.020(1)(a) as is, see Appendix 6, Section 15, p. 18, and would have left the key part of the definition of “gross revenue” (RCW 54.28.011)—“the amount received from the sale of electric energy”—the same, as well, *id.*, Section 14, p. 17. Most significantly, the Department’s Appendix G, the House Bill Report for HB 1316, explains that the current RCW 54.28.020(1)(a) privilege tax “bases” or measures the tax on “electricity that is distributed to Public Utility District customers.” Appendix G at p. 3. This statement supports the Districts’ interpretation of RCW 54.28.020(1), not the Department’s. (The Legislature later scrapped HB 1316 during the 2003 session and replaced it with Substitute House Bill 1316, which contained only an intent clause. See Appendix 7.)

In 2006, House Bill 2609 was introduced. See Appendix 8. This bill was similar to the original HB 1316 (see Appendix 6) and would have recodified RCW 54.28, but left all key statutes and definitions intact. *Id.* at p. 17-18 (Sections 14 and 15). Here again, the Bill Analysis included

with the Department's Brief described the RCW 54.28.020(1)(a) privilege tax as based on "electricity that is distributed to Public Utility District customers." Department's Brief, Appendix G, p. 3. It is difficult to understand how any of these proposed bills help the Department's argument.

If any legislative history should be examined, it should be the history of RCW 54.28.020, not recent failed legislation. This statute was originally enacted effective May 1, 1941. Laws of 1941, ch. 245, § 2; see Appendix 9. At that time there was only one component to the privilege tax and the statute stated that the "tax shall be two per cent (2%) of the gross revenues derived from the sale of electric energy within this state, exclusive of the revenues from sales of electric energy for resale". *Id.*

The original law was first amended in 1947. The language was changed as follows:

(i) two per cent (2%) of the gross revenues derived by said district from the sale of all "distributed energy", i.e., electric energy which it distributes to consumers but neither generates nor purchases from generating districts;

Laws of 1947, ch. 259, § 2; see Appendix 10.¹⁷ As can be seen, this tax had a definition within the tax-imposing statute, but the tax was still only on "electric energy which [the district] distributes to consumers."

¹⁷ The two five percent (5%) privilege taxes were added at this time, too, although they were included as subsections (ii) and (iii) not (b) and (c) as in the present statute.

The privilege tax law was again amended in 1949, with no change to the key language imposing the two percent tax at issue here. See Appendix 11. In the 1957 amendment, the words “(2%)” and “such” were removed from the subsection. Laws of 1957, ch. 278, § 2; see Appendix 12. The 1957 legislation also recodified the privilege tax chapter into RCW 54.28 and created the tax-imposing section, RCW 54.28.020 (*id.*), and, for the first time, defined the term “gross revenue.” See Laws of 1957, ch. 278, § 12 (Appendix 12). That definition remains the same today. RCW 54.28.011. In 1959, RCW 54.28.020 was amended into the current statutory language:

(1) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district;

Laws of 1959, ch. 274, § 2; see Appendix 13.¹⁸

RCW 54.28.020 was amended again in 1977, but not subsection (1). Laws of 1977, 1st ex. Sess., ch. 366, § 2; see Appendix 14. In 1982, RCW 54.28.020 was amended to create two subsections, (1) and (2), and the subparts of subsection (1) were relabeled (a), (b) and (c). Laws of 1982, 1st ex. Sess., ch. 35, § 18; see Appendix 15. RCW 54.28.020 was last amended in 1983, but subsection (1)(a) was not changed. Laws of 1983, 2nd ex. Sess., ch. 35, § 18; see Appendix 16.

¹⁸ The three subparts of RCW 54.28.020 were changed to (1), (2), and (3), also.

This historical review of RCW 54.28.020(1)(a) and its predecessor statutes provides no evidence of any legislative intent to apply the two percent tax to anything other than gross revenues from sales of electric energy distributed to consumers. And, there is nothing in this legislative history to suggest basic service charges like those imposed here by the Districts upon their customers were intended to be considered part of the sale of electric energy.

E. The Out-Of-State Authorities Relied Upon By The Department Are Distinguishable And Not Binding On This Court.

The Department cites several out-of-state authorities to bolster its contention the RCW 54.28.020(1)(a) privilege tax is intended to cover basic customer service charges. See Department's Brief at 22-26, citing Chesapeake and Potomac Telephone Co. of Maryland v. Director of Finance for Mayor and City Council of Baltimore, 343 Md. 567, 683 A.2d 512 (Md. 1996), affirming Director of Finance for Mayor and City Council of Baltimore v. Charles Towers P'ship, 104 Md. App. 710, 657 A.2d 808 (Md. Ct. Spec. App. 1995); Tucson Elec. Power Co. v. Arizona Department of Revenue, 170 Ariz. 145, 822 P.2d 498, 500 (Ariz. Ct. App. 1991); Four County Elec. Membership Corp. v. Powers, 96 N.C. App. 417, 386 S.E.2d 107 (N.C. Ct. App. 1989); Illinois Power Co. v. Mahin, 49 Ill. App. 3d 713, 364 N.E.2d 597 (Ill. App. Ct. 1977) affirmed, Illinois Power Co. v. Mahin, 72 Ill. 2d 189, 381 N.E.2d 222 (1978); Penn. Power & Light Co. v. Penn. Bd. of Fin. And Rev., 553 Pa. 1, 717 A.2d 504 (Pa.

1998) (These cases were attached to the Department’s Brief as Appendix I-N). Each of these cases is distinguishable from the Districts’ facts, and none of them are binding on this Court.

- In Chesapeake, supra (683 A.2d 512), taxpayers challenged the assessment of a municipal tax on two separately stated charges for electricity—a “*customer charge*” “designed to recover metering, billing, and other administrative costs . . . associated with the production, transmission, distribution and sale of electricity” and a “*demand charge*” “designed to recover the costs associated with the equipment and facilities needed to produce, transmit, and distribute electricity.” Id. at 514. Neither of these charges varied “in proportion to the amount of electricity consumed.” Id. at 513. The question before the court was “whether, pursuant to Baltimore City Code (1983 Repl.Vol. & 1999 Cum. Supp.) Article 28, § 55(a)(1), a tax levied on the ‘gross sales price’ of ‘sales for consumption’ of electricity” applied to the customer charge and the demand charge.¹⁹ The taxpayers contended the customer charge and demand charge were not “sales for consumption” and should not be subject to the municipal tax. The Maryland court ruled that the tax applied

¹⁹ In pertinent part, the Baltimore City Code stated

... there is hereby levied and imposed on all sales for consumption . . . of . . . electricity delivered in Baltimore City through pipes, wires or conduits . . . a tax at the rate of five percentum (5%) upon the gross sales price thereof.

Article 28, § 55.

to the two charges, holding that “the operative word . . . is ‘sales,’ as that is the unit of consideration on which” the tax is imposed.²⁰ *Id.* at 518. The court went on to state that to fall within the tax, “a sale needs only to be ‘for consumption,’ ([court’s] emphasis added), not actually consumed.” *Id.* (This is different than the privilege tax, which imposes the tax in the active—“distribute[s] to consumers” (emphasis added).

RCW 54.28.010(4), 54.28.020(1)(a).) The Maryland court then held:

Because we have concluded that the ordinance clearly requires the taxation of the entire sales price, and because even the taxpayers themselves concede that customer and demand charges are “part of the total price charged for the provision of electricity,” it follows that the customer and demand charges are part of the gross sales price to which the 8% tax rate is to be applied. The fact that BGE bills separately identify and specify the various components of the utility’s costs in providing electricity to the class of customers to which the taxpayers belong, including its fixed costs, does not change the fact that the sales, as a whole, are for consumption.

Chesapeake, *supra* at 518.

It therefore is clear that the Maryland court was dealing with entirely different statutory language than what is contained in the privilege tax law. The general rule in Washington is that courts of this state are not bound by decisions of courts in other states on matters involving taxation, because these decisions too often turn on the specific and distinctive language of the tax statute at issue. See First American Title Insurance

²⁰ Focusing on the word “sale” in the phrase “sale of electric energy” (RCW 54.28.011), one could make the argument that the phrase that follows—“electric energy”—limits the unit of consideration upon which the privilege tax is to be imposed.

Company v. Department of Revenue, 98 Wn.App. 882, 888, n. 20, 991 P.2d 120 (2000), aff'd 144 Wn.2d 300, 27 P.3d 604 (2001). The Washington Supreme Court has repeatedly admonished that, because other state courts may have been interpreting different statutory language, it is error to rely on out-of-state case law without examining the statutory language underlying those decisions. See Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 942, 845 P.2d 1331 (1993); King County Water District v. Tax Commission, 58 Wn.2d 282, 287, 362 P.2d 244 (1961). This is precisely why the Chesapeake decision is not binding on this Court. Moreover, the Department has made no effort to analyze the statutory language, or explain the language of the Baltimore code that is in any way similar to RCW 54.28. On that basis alone this Court may—and should—decline to give any weight to this out-of-state authority.²¹

- In Tucson Electric, supra (822 P.2d 498), the utility entered into an agreement with a mining company (“Pima”) “to supply electricity up to a specified maximum demand for the operation” of the mine. *Id.* at 499. Pima “would pay Tucson Electric for specified minimum amounts of electricity each month even if its actual use was less.” *Id.* During the period of the agreement the minimum monthly demand was between eight and 30 megawatts. *Id.* At the 30 megawatt level the minimum demand

²¹ The taxpayers in Chesapeake also conceded “that customer and demand charges are ‘part of the total price charged for the provision of electricity’” (683 A.2d at 580), a concession the Districts do not make here.

charge was \$200,000 per month. *Id.* A transaction privilege tax was paid on the minimum demand charge and Tucson Electric later sued the Arizona Department of Revenue for a refund, “claiming that the minimum charge was not revenue received . . . for furnishing electricity.” *Id.* at 500. There, the tax was levied and “measured by the amount or volume of business transacted by persons on account of their business activities and in the amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be.” *Id.* at 501 (quoting A.R.S. section 42 1309(A)). The tax on electricity was imposed upon “the gross proceeds of sales or gross income from the business” from “every person engaging or continuing within this state in . . . (b) Producing and furnishing, or furnishing to consumers, electricity, electric lights, current [and] power.” *Id.* at 501 (quoting A.R.S. section 42-1310).

The Arizona court focused upon the “producing and furnishing” language of the above statute and held:

. . . the business of “producing and furnishing . . . electricity” logically includes not only the actual selling of electricity as a commodity, but also providing the numerous continuing services necessary to deliver the electricity to the customer reliably and in a useful form.

. . .

. . . these services were just as much a part of Tucson Electric’s business of “producing and furnishing . . . electricity” as its actual sales of electricity.

Id. at 502-03. Once again, the privilege tax statutes at issue here are unlike the statutes at issue in Tucson Electric. The privilege tax is not imposed on the business of producing and furnishing electricity. Instead, it is imposed on gross revenues specifically from the sale of electric energy. In short, Tucson Electric is as equally distinguishable as Chesapeake.

- Regarding Four County, *supra*, (386, S.E.2d 107), and Illinois Power, *supra* (364 N.E.2d 598); *affirmed*, Illinois Power Co. v. Mahin, 72 Ill. 2d 189, 381 N.E.2d 222 (1978); the Department provides absolutely no analysis or explanation of the underlying facts or statutes other than the conclusory statements that “an electric cooperative’s ‘patronage capital’ charge to its members was includable as ‘gross receipts’ and therefore subject to tax” in the Four County case and that “‘gross receipts’ included monies received from utility customers for contribution in aid of construction, advances for construction and equipment and appliance rental and therefore subject to tax” in the Illinois Power case. Department’s Brief at 25. These out-of-state cases should be disregarded on the basis that the analysis of both the facts and underlying statutes, as required by First American, Nordstrom Credit and King County Water District, is wholly absent. Furthermore, a review of the Department’s description of the charges subject to tax in these two cases

shows that these cases are factually distinguishable even before one gets to an analysis of the statutes.²²

- The Department’s final case is Penn. Power, supra (717 A.2d 504). This is the only out-of-state case brought up by the Department before the trial court. See CP 566. The Districts addressed Penn. Power in their reply. See CP 585-86. Penn. Power is equally distinguishable. The revenues in question were late charges and the court ruled that such charges were merely “higher [electricity] rates imposed on late-paying customers.” 717 A.2d at 507. The statute at issue in Penn. Power did provide that electric light and power companies must “pay a tax upon each dollar of the gross receipts received from the ‘sales of electric energy.’” Id. at 506 (citing 72 P.S. § 8101(b)). While this statutory

²² As noted, in Illinois Power the revenues received by the utility included monies from “contributions in aid of construction, advances for construction, and equipment and appliance rentals.” 364 N.E.2d at 598. The tax was on “gross receipts,” which was defined to include not only consideration from gas or electricity “distributed, supplied, furnished or sold” but also “for all services rendered in connection therewith.” Id. at 599 (quoting Ill.Rev.Stat. 1973, ch. 120, pars. 467.16, 468). The court focused on the part of the statute imposing the tax on “all services connected therewith” and found that the receipts from the three activities all fell within this “plain and unambiguous” phrase. Id. at 601. In this case, Illinois Power relied on the Washington case, King County Water District, supra, “involving . . . almost the same facts.” 364 N.E.2d at 601. The Court distinguished King County, as follows:

But the pertinent phrases there were “gross operating revenue” and “including operations incidental thereto.” This is hardly identical, nor are the facts the same as is apparent where water distribution is involved. As might be gathered in citing to us this case, the utility there won. But we don’t have to disagree with the holding which we don’t in concluding that the case is not authority here for the reasons stated.

Id. at 601-02. This Court should view the Illinois Power case in the same light: the pertinent statutes are “hardly identical,” the facts here are even more dissimilar than those compared by the court in Illinois Power, and this Court does not have to give any precedential effect to the Illinois case.

language is arguably similar to RCW 54.28.020(1)(a) and 54.28.011, the underlying facts are entirely different. Because the basic customer charge is imposed by the Districts even if the customer receives no electricity, it could not possibly be a charge for electric energy. Penn. Power offers no support for the Department's argument, either.

VI.

ASSIGNMENTS OF ERROR ON CROSS-APPEAL

The Districts make the following assignments of error on cross-appeal:

1. The trial court erred in ruling that “the appropriate statute of limitations to apply is three, not five, years.” CP 809.

2. The trial court erred in granting the Districts “partial refunds of privilege taxes overpaid under RCW 54.28.020(1)(a) in the years 2003, 2004 and 2005” only. CP 813.

3. The trial court erred in granting Clark privilege tax refunds in the following years and amounts only:

For 2003, the amount of \$303,914; for 2004, the amount of \$311,818; and for 2005, the amount of \$319,858; for a total refund of \$935,590[.]

CP 813.

4. The trial court erred in granting Grays Harbor privilege tax refunds in the following years and amounts only:

For 2003, the amount of \$73,675; for 2004, the amount of \$118,287; and for 2005, the amount of \$117,618; for a total refund of \$309,580[.]

CP 813.

5. The trial court erred in granting a total judgment amount of only \$1,245,170. CP 811.

6. The trial court erred in granting no interest on the judgment amount. CP 811.

VII.

STATEMENT OF ISSUES ON CROSS-APPEAL

The following issues pertain to the Assignments of Error on Cross-Appeal:

1. Whether the trial court should have ruled that the appropriate statute of limitations for the Districts' refunds of overpaid privilege taxes was five years instead of three years. (Assignment of Error/Cross-Appeal No. 1).

2. Whether the Districts should receive refunds of overpaid privilege taxes in the years 2001 and 2002, in addition to the refunds granted by the trial court for the years 2003-2005. (Assignment of Error/Cross-Appeal No. 2).

3. Whether the trial court should have allowed Clark refunds for additional privilege tax overpaid in the years 2001 and 2002. (Assignment of Error/Cross-Appeal No. 3).

4. Whether the trial court should have allowed Grays Harbor additional refunds of overpaid privilege taxes for the years 2001 and 2002. (Assignment of Error/Cross-Appeal No. 4).

5. Whether the trial court should have included the overpaid privilege taxes in the years 2001 and 2002 in the total judgment amount. (Assignment of Error/Cross-Appeal No. 5).

6. Whether the trial court should have granted interest on the judgment amounts. (Assignment of Error/Cross-Appeal No. 6).

VIII.

STATEMENT OF THE FACTS ON RESPONDENTS' CROSS- APPEAL

In the Districts' complaint, they sought refunds of privilege taxes paid in the years 2001 to 2005 on basic customer service charges. CP 8. The Department denied the Districts' refund claims and this action was brought under RCW 82.32.180 (CP 5), which would allow the five-year statute of limitations set forth in RCW 82.32.060 to apply.²³ The

²³ RCW 82.32.060 states in pertinent part as follows:

(1) If, upon receipt of an application by a taxpayer for a refund . . . it is determined . . . that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. . . . [N]o refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

...

Footnote continued on next page.

Department answered that the refund provisions in RCW 82.32 were inapplicable, and if refunds were to be allowed, they were limited to three years under RCW 4.16.080(3),²⁴ not five years under RCW 82.32.060(1). CP 12-13. Therefore, the Department alleged that the Districts' "refund claims for tax years 2000 and 2001 are barred by the statute of limitations." CP 13. The trial court agreed with this part of the Department's argument and judgment was entered accordingly (CP 810-819), granting the Districts refunds of privilege taxes overpaid in the years 2003-2005 instead of the years 2001-2005 sought by the Districts. The District filed a cross-appeal on this statute of limitations issue. CP 833-844.

(3) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) . . . Interest allowed after December 1, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

RCW 82.32.060(1), (3), (4)(a).

²⁴ RCW 4.16.080 is a statute limiting certain actions to three years, including:

. . . an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument.

RCW 4.16.080(3).

IX.

ARGUMENT ON CROSS APPEAL

The Districts believe the correct statute of limitations for refunds of overpaid privilege taxes under RCW 54.28 is set forth in RCW 82.32.060(1). Accordingly, the Districts are entitled to refunds on privilege taxes erroneously paid back to January 1, 2001.²⁵

²⁵ As noted, RCW 82.32.060(1) states that “no refund or credit shall be made for taxes . . . paid [by a taxpayer] more than four years prior to the beginning of the calendar year in which the refund application is made.” Here, the Districts’ refund claim was filed in Thurston County Superior Court on December 28, 2005, and therefore under RCW 82.32.060(1), they are entitled to receive refunds of all overpaid taxes back to January 1, 2001. The Department, on the other hand, believes the Districts’ refund claims are governed by RCW 43.01.072 and 43.88.170. RCW 43.01.072 provides as follows:

Whenever any law which provides for the collection of fees or other payments by a state agency does not authorize the refund of erroneous or excessive payments thereof, refunds may be made or authorized by the state agency which collected the fees or payments of all such amounts received by the state agency in consequence of error, either the fact or of law as to: (1) the proper amount of such fee or payments; (2) The necessity of making or securing a permit, filing, examination or inspection; (3) The sufficiency of an applicant for any other reason; (5) The necessity for the payment.

RCW 43.88.170, in turn, provides as follows:

Whenever any law which provides for the collection of fees or other payment by an agency does not authorize the refund of erroneous or excessive payments thereof, refunds may be made or authorized by the agency which collected the fees or payments of all such amounts received by the agency in consequence of error, either of fact or of law. The regulations issued by the governor pursuant to this chapter shall prescribe the procedure to be employed in making refunds.

The governor has not issued any procedural rules to implement this statute. In addition, these statutes by their own terms apply to “fees or other payments” made to a state agency. Taxes are a distinct class of payments and if the Legislature intended to include taxes in these statutes it most surely would have said so. See Covell v. City of Seattle, 127 Wn.2d 874, 905 P.2d 324 (1995) (distinguishing “taxes” from “fees” imposed by a government entity); see also Tesoro Refining and Marketing Company v. Department of Revenue, 164 Wn.2d 310, 190 P.3d 28, 35 (2008) (when a phrase like “other payments” follows the word “fees,” and even though the word “or” separates the two, the phrase must take on a similar connotation as the prior word; here, this means “other payments” must be similar to “fees” and taxes are clearly not fees).

A. **Privilege Tax Refund Claims Are Implicitly Authorized Under The Revenue Act (Title 82).**

There is no statute that expressly and specifically outlines the privilege tax refund procedure nor is there any case law on point. However, the limitations period set forth in RCW 82.32.060(1) implicitly applies to privilege tax refund claims.

The privilege tax at issue is imposed under RCW 54.28.020(1)(a). This tax is part of a broader category of privilege taxes imposed by RCW 54.28. The privilege tax act does not provide a procedure for asserting a claim for a refund; it also does not provide a procedure for contesting a privilege tax assessment.²⁶ However, RCW 54.28.030, 54.28.040, 54.28.050 do appoint the Department as the agency responsible for administering, assessing, and collecting the tax and this fact leads to RCW 82.32.

Chapter 82.01 RCW establishes and sets out the duties of the Department, including the duty to assess and collect all taxes and administer all programs relating to taxes which were the responsibility of the Tax Commission as of 1967 and “which the legislature may hereafter make the responsibility of” the Department. RCW 82.01.060(1). The privilege tax is one of the taxes for which the Department, and the Tax

²⁶ The Department originally took the position that there was no statutory authority for it to allow any refunds of privilege taxes (see CP 182), a clear violation of due process if there ever was one.

Commission before it, is specifically responsible (RCW 54.28.030, 54.28.040, 54.28.050) and has been since 1941. So Title 82 RCW, by and through RCW 82.01.060(1), are directly relevant to privilege tax refund claims.

RCW 82.01.060(2) and (4) require the Department to enact regulations and provide for an adequate system of departmental review of its assessment and collection activities. RCW 82.01.060(2) states that the director shall “make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature.” The Legislature delegated to the Department the duty to assess and collect the privilege tax. RCW 54.28.030, 54.28.040, 54.28.050. The Department has not adopted any rules or regulations expressly relating to the procedure a public utility district must follow to contest a privilege tax assessment or seek a refund of a privilege tax overpayment. The Department is therefore either in breach of its statutory duties or considers its general administrative procedures, which are set forth in RCW 82.32 and WAC 458-20 et seq., as fully applicable and sufficient for purposes of administering the privilege tax.

RCW 82.32.010 sets forth the general administrative provisions with respect to several delineated other taxes and taxes imposed “under other titles, chapters, and sections in such manner and to such extent as

indicated in each such title, chapter, or section.” RCW 82.04.030 defines “persons” subject to the Revenue Act (Title 82 RCW) and this definition includes municipal corporations of the state of Washington. RCW 82.02.010(3) defines “taxpayer” to include any corporation “liable for any tax . . . or who engages in any business or performs any act for which a tax is imposed by” Title 82. These terms—“person” and “taxpayer”—are expressly applicable to chapter RCW 82.32.

RCW 82.01.060(1) provides for the Department’s administration and collection of taxes as directed by the Legislature, which includes the privilege tax imposed upon the Districts (municipal corporations). RCW 82.01.060(1); RCW 54.28.030, 54.28.040, 54.28.050. The Districts, from which the Department is collecting the privilege tax pursuant to RCW 82.01.060(1) and RCW 54.28.030, 54.28.040, and 54.28.050, each constitute a “taxpayer” for purposes of RCW 82.02.010 and RCW 82.32.060(1). Because RCW 82.02.010(3) and RCW 82.04.030 make each District a “taxpayer” and “person” subject to the Revenue Act, the provisions of RCW 82.32.060 granting “taxpayer” refund claims should be fully applicable to them. The failure of the Department to expressly enact any rules or regulations relating to the refund claims process for privilege tax payers under RCW 82.01.060(2), further bolsters the Districts’ contention that RCW 82.32.060 applies to the privilege taxes imposed by RCW 54.28.

B. The Department's Administrative Rules Also Support Privilege Tax Refund Claims Under RCW 82.32.060.

RCW 82.01.060(2) imposes upon the Department the duty to adopt rules it deems necessary to carry out its powers and duties. RCW 82.01.060(4) requires the Department to “provide by general regulations for an adequate system of departmental review of the actions of the department . . . in the assessment or collection of taxes.” The Washington Administrative Code (“WAC”) does not contain any rules expressly pertaining to privilege tax refund claims. However, the WAC contains “Excise Tax Rules” that generally address procedures relating to refunds or credits for overpayment of taxes.²⁷ These procedural rules are found at WAC 458-20-229 (“Rule 229”) and WAC 458-20-100 (“Rule 100”) (collectively, the “Procedural Rules”). The five-year limitations period (RCW 82.32.060(1)) would apply if the Procedural Rules control.

Rule 229 pertains to refunds and states in its introduction that:

. . . this section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.

WAC 458-20-229(1). There is no limitation in the above provision that this regulation applies only to taxes imposed under Title 82 RCW.

²⁷ As shown, the privilege tax is an excise tax. See High Tide Seafoods, supra, and Black v. State, supra.

Rule 100 pertains to appeals. It similarly uses general language and states in its introduction that the rule “explains the procedure for a taxpayer to seek an administrative review of actions of the department” of revenue. WAC 458-20-100 (emphasis supplied). An explanation of the statute of limitation described in Rule 229 contains the same general language as the statute, RCW 82.32.060(1), stating that “no refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made . . . ” WAC 458-20-229(2)(a). In describing the refund procedure, Rule 229 provides that when a “taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file a refund or credit.” WAC 458-20-229(3)(b).

The Procedural Rules do not define the terms “taxpayer” or “taxes.” The definition of “taxpayer” contained in the RCW 82.02.010(3), as well as the definition of “person” in RCW 82.04.030, clearly apply to public utility districts responsible for payment of the privilege tax. RCW 82.02.010(3). Thus, the general language of the Procedural Rules would appear to apply to and encompass a privilege tax refund claim.

In summary, while there is no specific statement that addresses the applicability of the Procedural Rules to privilege tax refund claims, several factors weigh in favor of applying them to these claims. One, the Procedural Rules are broadly drafted to apply to appeals of “taxes” by

“taxpayers.” Two, RCW 82.01.060(2) requires the Department to enact regulations that provide for an adequate system of departmental review of its assessment and collection activities, and which enable the Department to perform the duties imposed on it by the Legislature. The Procedural Rules accomplish that duty vis-à-vis the privilege tax. Three, a municipal corporation is a “taxpayer” under RCW 82.02.010(3) and a “person” in RCW 82.04.030. Finally, RCW 43.01.072 and 43.88.170 have no application because they apply to “fees” and similar payments, of which taxes are a different class. Thus, the Procedural Rules and in particular Rule 229 for refunds provide a clear path to the limitations period set forth in RCW 82.32.060(1), making that statute fully applicable to the Districts’ refund claims here.

[Continued on Next Page]

X.

CONSOLIDATED CONCLUSION

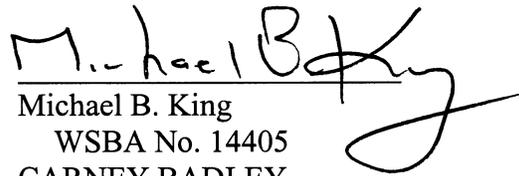
The trial court's ruling granting the Districts refunds of privilege taxes paid on basic customer service charges should be affirmed. The trial court's ruling allowing only three years of tax refunds to the Districts should be reversed and the Districts should receive refunds for five years of the privilege taxes they overpaid, plus interest under RCW 82.32.060.

RESPECTFULLY SUBMITTED this 15th day of October, 2008.



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I certify that on the date set forth below I served a copy of each of the following documents:

1. Consolidated Answering Brief and Opening Brief on Cross-Appeal of Respondents;
2. Respondents' Motion For Acceptance Of Overlength Consolidated Answering Brief on Appeal and Opening Brief on Cross-Appeal; and
3. This Declaration of Service.

via United States Mail, postage prepaid, on the Respondent's counsel of record, as follows:

David M. Hankins
Senior Counsel
Attorney General/Revenue Division
7141 Cleanwater Dr. SW
P.O. Box 40123
Olympia, WA 98504-0123

I certify under penalty of perjury pursuant to the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of October, 2008.



Kristi Hartman

APPENDIX

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APPENDIX 1

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0064.2/09 2nd draft

ATTY/TYPIST: JA:seg

BRIEF DESCRIPTION: Clarifying the measure of the taxes imposed on public utility districts as provided in chapter 54.28 RCW.

1 AN ACT Relating to clarifying the measure of the taxes imposed on
2 public utility districts as provided in chapter 54.28 RCW; amending RCW
3 54.28.010, 54.28.020, 54.28.030, 54.28.070, and 54.28.090; creating a
4 new section; and repealing RCW 54.28.011.

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

6 **Sec. 1.** RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended to
7 read as follows:

8 As used in this chapter:

9 (1) "Operating property" means all of the property utilized by a
10 public utility district in the operation of a plant or system for the
11 generation, transmission, or distribution of electric energy for sale;

12 (2) "Taxing districts" means counties, cities, towns, school
13 districts, and road districts;

14 (3) "Distributes to consumers" means the sale of electric energy to
15 ultimate consumers thereof, and does not include sales of electric
16 energy for resale by the purchaser;

17 (4) "Wholesale value" means all costs of a public utility district
18 associated with the generation and transmission of energy from its own
19 generation and transmission system to the point or points of inter-

1 connection with a distribution system owned and used by a district to
2 distribute such energy to consumers, or in the event a distribution
3 system owned by a district is not used to distribute such energy, then
4 the term means the gross revenues derived by a district from the sale
5 of such energy to consumers;

6 (5) "Thermal electric generating facility" means a steam-powered
7 electrical energy producing facility utilizing nuclear or fossil fuels;

8 (6) "Placed in operation" means delivery of energy into a
9 transmission or distribution system for use or sale in such a manner as
10 to establish a value accruing to the power plant operator, except
11 operation incidental to testing or startup adjustments;

12 (7) "Impacted area" for a thermal electric generating facility on
13 a federal reservation means that area in the state lying within thirty-
14 five statute miles of the most commonly used entrance of the federal
15 reservation and which is south of the southern boundary of township
16 fifteen north;

17 (8) "Gross revenue" means the value proceeding or accruing to a
18 public utility district from the business of operating works, plants,
19 or facilities for the generating, distributing, and selling of electric
20 energy, excluding any tax levied by a municipal corporation upon the
21 district pursuant to RCW 54.28.070.

22 **Sec. 2.** RCW 54.28.020 and 1983 2nd ex.s. c 3 s 8 are each amended
23 to read as follows:

24 (1) There is hereby levied and there shall be collected from every
25 district a tax for the act or privilege of engaging within this state
26 in the business of operating works, plants, or facilities for the
27 generation, distribution, and sale of electric energy. With respect to
28 each such district, except with respect to thermal electric generating
29 facilities taxed under RCW 54.28.025, such tax shall be the sum of the
30 following amounts: (a) Two percent of the gross revenue(~~s~~) derived
31 by the district from (~~the sale of all electric energy which it~~
32 ~~distributes to~~) consumers who are served by a distribution system
33 owned by the district; (b) five percent of the first four mills per
34 kilowatt-hour of wholesale value of self-generated energy distributed
35 to consumers by a district; (c) five percent of the first four mills
36 per kilowatt-hour of revenue obtained by the district from the sale of
37 self-generated energy for resale.

1 (2) An additional tax is imposed equal to the rate specified in RCW
2 82.02.030 multiplied by the tax payable under subsection (1) of this
3 section.

4 **Sec. 3.** RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended to
5 read as follows:

6 On or before the fifteenth day of March of each year, each district
7 subject to this tax shall file with the department of revenue a report
8 verified by the affidavit of its manager or secretary on forms
9 prescribed by the department of revenue. Such report (~~shall~~) must
10 state (1) the gross revenue(~~s~~) derived by the district (~~from~~) in
11 connection with the sale of all distributed energy to consumers and the
12 respective amounts derived from such sales within each county; (2) the
13 gross revenue(~~s~~) derived by the district from the sale of self-
14 generated energy for resale; (3) the amount of all generated energy
15 distributed from each of the facilities subject to taxation by a
16 district from its own generating facilities, the wholesale value
17 thereof, and the basis on which the value is computed; (4) the total
18 cost of all generating facilities and the cost of acquisition of land
19 and land rights for such facilities or for reservoir purposes in each
20 county; and (5) such other and further information as the department of
21 revenue reasonably may require in order to administer the provisions of
22 this chapter. In case of failure by a district to file such report,
23 the department may proceed to determine the information, which
24 determination shall be contestable by the district only for actual
25 fraud.

26 **Sec. 4.** RCW 54.28.070 and 1941 c 245 s 3 are each amended to read
27 as follows:

28 Any city or town in which a public utility district operates works,
29 plants, or facilities for the distribution and sale of electricity
30 (~~shall have the power~~) is authorized to levy and collect from such
31 district a tax on the gross revenue(~~s~~) derived by such district from
32 (~~the sale of electricity~~) business conducted within the city or town,
33 exclusive of the revenue(~~s~~) derived from the sale of electricity for
34 purposes of resale. Such tax when levied (~~shall be~~) is a debt of the
35 district, and may be collected as such. Any such district (~~shall have~~

1 ~~the power to~~) may add the amount of such tax to the rates or charges
2 it makes for electricity so sold within the limits of such city or
3 town.

4 **Sec. 5.** RCW 54.28.090 and 1980 c 154 s 9 are each amended to read
5 as follows:

6 (1)(a) Except as provided in (b) of this subsection, the county
7 legislative authority of each county (~~shall~~) must direct the county
8 treasurer to deposit funds to the credit of each taxing district in the
9 county, other than school districts, according to the manner (~~they~~)
10 the county legislative authority deems most equitable (~~except not~~
11 less than)).

12 (b) Deposits under this section to a city or town must be in an
13 amount equal to at least three-fourths of one percent of the gross
14 revenue(~~s~~) obtained by a district (~~from~~) in connection with the
15 sale of electric energy within (~~any~~) the incorporated city or town
16 (~~shall be remitted to such city or town~~). Information furnished by
17 the district to the county legislative authority (~~shall be~~) is the
18 basis for the determination of the amount to be paid to such cities or
19 towns.

20 (2) The provisions of this section (~~shall~~) do not apply to the
21 distribution of taxes collected under RCW 54.28.025.

22 NEW SECTION. Sec. 6. RCW 54.28.011 ("Gross revenue" defined) and
23 1957 c 278 s 12 are each repealed.

24 NEW SECTION. Sec. 7. This act applies both prospectively and
25 retroactively.

--- END ---

Changes needed to Z-0064.2

- Delete section 6 from the bill.
- Replace section 1 with the following:

Sec. 1. 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, including 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.

- Revise sections 4 and 7 as follows:

Sec. 4. RCW 54.28.070 and 1941 c 245 s 3 are each amended to read as follows:

Any city or town in which a public utility district operates works, plants, or facilities for the distribution and sale of electricity (~~shall have the power~~) is authorized to levy and collect from such district a tax on the gross revenue((s)) derived by such district from in connection with (~~the sale of electricity~~ **"un-delete" the highlighted language**) business conducted within the city or town, exclusive of the revenue((s)) derived from the sale of electricity for purposes of resale. Such tax when levied (~~shall be~~) is a debt of the district, and may be collected as such. Any such district (~~shall have the power to~~) may add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town.

NEW SECTION. Sec. 7. This act applies both prospectively and retroactively only.

AN ACT Relating to prospectively clarifying the measure of the taxes imposed on public utility districts as provided in chapter 54.28 RCW; amending RCW 54.28.011; and creating a new section.

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

Sec. 1. 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.

NEW SECTION. **Sec.2.** This act applies prospectively only.

APPENDIX 2

No. 39147

In The SUPREME COURT
Of The STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT No 3 OF MASON COUNTY,
a municipal corporation,

Appellant,

v

THE STATE OF WASHINGTON,

Respondent

APPEAL FROM THE SUPERIOR COURT FOR
THURSTON COUNTY

THE HONORABLE HEWITT A HENRY, JUDGE

BRIEF OF RESPONDENT

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0-000000172

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SEARCHED

0-000000173

In The SUPREME COURT
Of The STATE Of WASHINGTON

PUBLIC UTILITY DISTRICT No 3 OF MASON COUNTY,
a municipal corporation,

Appellant,

v

THE STATE OF WASHINGTON,

Respondent

APPEAL FROM THE SUPERIOR COURT FOR
THURSTON COUNTY

THE HONORABLE HEWITT A HENRY, JUDGE

BRIEF OF RESPONDENT

I

COUNTER-STATEMENT OF THE CASE

Appellant is a public utility district created under the laws of the state of Washington and as such is engaged in the business of operating a plant or system for the distribution of electrical energy for sale. The facts of the case are contained in the Pretrial Order (Tr 3) and can be summarized as follows

As the result of an audit made by the tax commission and

completed July 23, 1963, a deficiency tax assessment (Ex A) was made against appellant for additional taxes due under chapter 82 16 RCW, public utility tax. The appellant has disputed that portion of this deficiency assessment which arises because the tax commission added to appellant's reported "gross income" (the measure of the tax imposed under chapter 82 16 RCW) certain amounts paid to appellant by its customers which were billed as a 1% city of Shelton franchise or privilege tax levied pursuant to Shelton City Ordinance (Ex F), and a 2% public utility *district* privilege tax levied under chapter 54 28 RCW.

The 1% city tax and the 2% utility district tax were passed on by appellant to its customers and billed as separate items on the customer's bill for electricity. Appellant then paid the 1% tax to the city of Shelton and the 2% tax to the state of Washington.

II

ARGUMENT IN SUPPORT OF JUDGMENT

A. Does the 1% City of Shelton Tax Levied under City Ordinance (Ex. F) Constitute a Part of Appellant's "Gross Income," the Measure of the State Tax Imposed under Chapter 82.16 RCW?

The deficiency assessment, herein challenged by appellant, is based upon additional taxes imposed by RCW 82 16 020 which reads in material part

"There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the *gross income* of the business, multiplied by the rate set out after the business, as follows

"(1) * * * light and power * * * businesses Three percent * * *" (Emphasis supplied)

An additional tax is imposed by RCW 82 16 026, making the total 3 6%

A light and power business is defined in RCW 82 16 010 (5)

“(5) ‘Light and power business’ means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale,”

The measure of the tax is “gross income” as defined by RCW 82 16 010(12)

“(12) ‘Gross income’ means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, *but without any deduction on account of the cost of the commodity furnished or 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,” (Emphasis supplied)

“Value proceeding or accruing” is defined in RCW 82 04 090 (which definition applies to chapter 82 16 RCW, see RCW 82 16-010(13))

“‘Value proceeding or accruing’ means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued
* * *”

To paraphrase the above statutes, the tax imposed under chapter 82 16 RCW is upon every person for the act or privilege of engaging in the business of operating a plant or system for the distribution of electrical energy for sale. The tax is computed at the rate of 3.6% of the gross income, which is the consideration received from the performance of the business without any deduction for taxes paid or any other expense of doing business whatsoever.

The 1% city of Shelton tax is imposed by ordinance (Ex F) under the authority of RCW 54 28 070 which reads

“Any city or town in which a public utility district operates works, plants or facilities for the distribution and sale of electricity shall have the power to *levy and collect from such district a tax* on the gross revenues derived by

such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale *Such tax when levied shall be a debt of the district, and may be collected as such* Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town" (Emphasis supplied)

The city tax, by the express terms of the ordinance and statute, is imposed directly upon and made an obligation of the public utility district. It is in no sense an obligation owed to the city by customers of the district.

To the district the city tax is a cost of doing business, no different from labor costs, cost of materials or other overhead items. These all become an element of the cost of the product sold. To the customers the tax is simply one of the district's costs of doing business which they must pay as part of the price of electricity, the only difference being that the tax is separately stated in their bill while other costs of doing business are buried therein. Separate billing cannot convert the city tax into a tax imposed on the customer contrary to the express intent of the ordinance and RCW 54 28 070, *supra*.

The difference between taxes which are imposed upon the person engaged in business and which are thus not deductible from "gross income" for purposes of a tax measured by "gross income," and taxes which are imposed upon the ultimate consumer with the person engaged in business merely the collecting agent for the tax levying authority, is stated in Tax Commission Rule 195 (Ex G)

"C Other Taxes—The amount of taxes collected by a taxpayer, as agent for the State of Washington or its political subdivisions, or for the Federal government, may be deducted from the 'Gross Amount' reported. Such taxes are deductible under each tax classification of the Revenue

Act under which the 'Gross Amount' from such sales or services must be reported

"This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to the state, its political subdivisions, or to the Federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods he sells, or to the charge for services he renders, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction" (Emphasis supplied)

Furthermore, RCW 82 32 280, which applies to the tax imposed under chapter 82 16 RCW, reads

"Taxes imposed hereunder shall be in addition to any and all other licenses, taxes, and excises levied or imposed by the state or any municipal subdivision thereof"

Appellant elects to pass the city tax on to its customers rather than absorb it. This fact, however, does not make appellant a collecting agent for the city. The latter looks only to the former for its tax and is not concerned with any arrangements the appellant may have made to obtain the money to pay it.

B. Does the 2% State Tax Levied under Chapter 54.28 RCW, Constitute a Part of Appellant's "Gross Income," the Measure of the State Tax Imposed by Chapter 82.16 RCW?

The 2% privilege tax is levied under the authority of RCW 54 28 020 which reads

"There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts (1) Two percent of the gross revenues derived by the district from the sale of all electric

energy which it distributes to consumers who are served by a distribution system owned by the district; (2) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (3) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale."

This tax is computed by the Tax Commission upon a report made by the district and is payable by the district once each year (RCW 54.28.030 and .040). The tax is expressly imposed upon the district for the privilege of operating power distribution facilities.

This tax is to the appellant a cost of doing business and under the express terms of RCW 82.16.010(12), *supra*, is a part of "gross income" for purposes of measuring the tax imposed by chapter 82.16 RCW. The same reasoning used with respect to the city tax makes the utility district privilege tax a part of the "gross income" of appellant.

It is interesting to note that RCW 54.28.011 provides:

"'Gross revenue' shall mean the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070."

The statute defining gross income for purposes of chapter 82.16 RCW expresses just the opposite intent.

In *Klickitat County v. Jenner*, 15 Wn.2d 373, 130 P.2d 880 (1942), the court said:

"* * * No doubt, as appellants assert, the total construction charges upon which the respondents propose to compute the sales tax include various taxes paid to the state and Federal governments, but that does not necessarily render the tax invalid. There is no constitutional inhibition either of this state or of the United States against double taxation as applied to excise taxes. * * *"

III

ARGUMENT IN ANSWER TO APPELLANT

It is a fact that the protested assessment was based upon increased funds received by the appellant because it chose to pass on the city tax and the utility district privilege tax to its customers. But whether these taxes are passed on either by identifying them in the billing as separate charges or by adding them to the charges made for electricity without separately stating them, they are by express statutory definition part of "gross income" the measure of the tax imposed under chapter 82.16 RCW. The only way appellant can avoid this addition to "gross income" is to absorb these taxes and not charge any part of them to its customers.

Appellant argues that the two taxes in question are not part of "gross income" because they are simply amounts added to and paid by each customer over and above the appellant's regular charge for electricity. However, the public utility tax (chapter 82.16 RCW) is measured by "gross income" as defined in RCW 82.16.010(12) and not by some other concept of what gross income might be. The statutory definition states by necessary implication that taxes paid (by the utility district to another taxing authority) must be included as a part of revenue when arriving at "gross income."

Appellant pays the two taxes in question from money it receives from its customers the same way it pays all of its other obligations. The customers pay them as part of the consideration for electricity received and for no other reason. The customers owe nothing to the city or to the state on account of such taxes. All payments made by the customers including taxes passed on to them are "gross income" to appellant.

By adding the taxes to its customers (either separately or as a separate charge) appellant adds to its "gross income"

and cannot thereafter make deductions therefrom. The taxes are fundamentally an element of the cost of the electricity.

The case of *King County Water District v Tax Commission*, 58 Wn 2d 282, 362 P 2d 244 (1961), is not in point because that case dealt with revenue received or accrued prior to the time the water district had its facilities in operation and prior to the delivery of any water. See *The City of Kennewick v State*, 67 W D 2d 577, 409 P 2d 138 (1965), pointing out this same distinction. In the case at bar appellant is enabled to pass taxes on because it is selling a commodity, is engaged in the business of selling electricity, and for no other reason. The income received by appellant from the sale of electricity necessarily included amounts received to cover the two taxes in question. Chapter 82 16 RCW makes this so.

CONCLUSION

The 1% city of Shelton tax and the 2% tax imposed by chapter 54 28 RCW are both expressly made an obligation of and are levied upon appellant. Appellant cannot void its liability by passing those taxes on to its customers or convert those taxes into something other than part of its "gross income," the measure of the tax imposed under chapter 82 16 RCW.

Respectfully submitted,

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APPENDIX 3

HOUSE BILL 1007

State of Washington 57th Legislature 2001 Regular Session

By Representative Morris

Read first time 01/08/2001. Referred to Committee on Technology,
Telecommunications & Energy.

1 AN ACT Relating to the taxation of electricity; amending RCW
2 82.16.010, 82.16.020, 82.16.050, 82.16.090, 35.21.860, 35.21.865,
3 35.21.870, 52.18.020, and 82.02.030; adding a new section to chapter
4 82.04 RCW; adding a new section to chapter 84.36 RCW; adding a new
5 section to chapter 84.55 RCW; adding a new chapter to Title 82 RCW;
6 creating new sections; repealing RCW 82.16.0491, 82.16.053, 54.28.010,
7 54.28.011, 54.28.020, 54.28.025, 54.28.030, 54.28.040, 54.28.050,
8 54.28.055, 54.28.060, 54.28.070, 54.28.080, 54.28.090, 54.28.100,
9 54.28.110, and 54.28.120; and providing an effective date.

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

11 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

14 (1) "Customer" or "purchaser" means a person who acquires for
15 consideration electricity for use or consumption and not for resale.

16 (2) "Distribution services provider" means a person controlling or
17 operating distribution facilities for distribution of electricity to
18 the public. A distribution services provider includes a purchaser who
19 takes electricity directly from a transmission line and a purchaser who

1 generates electricity for the purchaser's own use but does not include
2 electricity generated by the purchaser for noncommercial use or for
3 agricultural use.

4 (3) "Person" is defined as provided in RCW 82.04.030.

5 (4) "Transmission services provider" means a person controlling or
6 operating transmission facilities.

7 (5) "Transmission facilities" means any facilities that are used to
8 provide transmission services as determined by the utilities and
9 transportation commission.

10 NEW SECTION. **Sec. 2. WHOLESALE ENERGY TRANSACTION TAX--RATE OF**
11 **TAX--EXEMPTIONS--COST RECOVERY.** (1)(a) Except as provided in
12 subsection (3) of this section, a wholesale energy transaction tax is
13 imposed upon electricity transmitted within the state as provided in
14 this section. The tax is imposed at a rate of cents per
15 kilowatt hour of electricity transmitted by a transmission services
16 provider in the state.

17 (b) For electricity produced in the state for delivery outside of
18 the state, the taxpayer is the person making a sale of electricity for
19 delivery outside the state. The transmission services provider shall
20 collect the tax from the taxpayer based upon the kilowatt hours
21 introduced onto transmission lines from the electrical generation
22 facility. The amount of kilowatt hours subject to tax must be reduced
23 by five percent to compensate for transmission line losses.

24 (c) For electricity produced in the state for delivery within the
25 state, the taxpayer is the distribution services provider. The
26 transmission services provider shall collect the tax based upon the
27 amount of kilowatt hours of electricity delivered to the distribution
28 services provider.

29 (d) For electricity produced outside the state for delivery inside
30 the state, the taxpayer is the distribution services provider. The
31 transmission services provider shall collect the tax based upon the
32 amount of kilowatt hours of electricity delivered to the distribution
33 services provider.

34 (2)(a) If more than one transmission services provider transmits
35 electricity, the last transmission services provider transmitting or
36 delivering the electricity shall collect the tax.

37 (b) If the transmission services provider is an agency of the
38 United States government, the distribution services provider receiving

1 the electricity shall self-assess the tax subject to the provisions of
2 this chapter.

3 (c) If an electrical generation facility located within the state
4 produces electricity for sale inside and outside the state, sales
5 within the state are considered to have come from electricity produced
6 within the state for purposes of the tax imposed by this section.

7 (3)(a) Electricity transmitted through the state that is not
8 produced or delivered in the state is exempt from the tax imposed by
9 this section.

10 (b) Electricity produced in the state by an agency of the United
11 States government for delivery outside of the state is exempt from the
12 tax imposed by this section.

13 (c) Electricity delivered to a purchaser that receives its power
14 directly from a transmission or distribution facility owned by an
15 entity of the United States government, or electricity that is
16 transmitted exclusively on transmission or distribution facilities
17 owned by an entity of the United States government, is exempt from the
18 tax imposed by this section.

19 (4) A distribution services provider is allowed to recover the tax
20 imposed by this section and the administrative costs to comply with
21 this chapter in its rates.

22 NEW SECTION. **Sec. 3. MULTISTATE EXEMPTION.** A person, upon proof
23 that the person has paid a tax in another state on the transmission of
24 electricity, is allowed a credit against the tax imposed by this
25 chapter if the tax has been paid in another state.

26 NEW SECTION. **Sec. 4. COLLECTION OF WHOLESALE ENERGY TRANSACTION**
27 **TAX--DISPOSITION OF REVENUE.** (1) A transmission services provider
28 shall collect the tax imposed under section 2 of this act from the
29 taxpayer and pay the tax collected to the department. If the
30 transmission services provider collects a tax in excess of the tax
31 imposed by section 2 of this act, both the tax and the excess must be
32 remitted to the department.

33 (2) Tax collected under this chapter shall be deposited in the
34 wholesale energy transaction account created in section 6 of this act.

35 NEW SECTION. **Sec. 5. ADMINISTRATION.** Chapter 82.32 RCW applies
36 to the taxes imposed in this chapter. The tax due dates, reporting

1 periods, and return requirements applicable to chapter 82.04 RCW apply
2 equally to the taxes imposed in this chapter.

3 NEW SECTION. **Sec. 6.** WHOLESale ENERGY TRANSACTION ACCOUNT--
4 CREATION AND USE. (1) The wholesale energy transaction account is
5 created in the state treasury. Moneys in the account may be spent only
6 after appropriation for the purposes of distributions under this
7 section and for activities of the office of financial management and
8 the department of revenue related to administration of this chapter.

9 (2) Under a distribution formula and method provided by the office
10 of financial management, money in the account shall be distributed, as
11 nearly as is practical, in a manner that replaces the fiscal year 2001
12 revenues generated by the taxation of light and power businesses, as
13 defined in subsection (3) of this section, or of electrical energy
14 businesses, as described in chapter 35.21 RCW, under the state and
15 local public utility taxes, the business and occupation tax, the public
16 utility district privilege tax, and the state and local property taxes.

17 (3) "Light and power business" means the business of operating a
18 plant or system for the generation, production, or distribution of
19 electrical energy for hire or sale and/or for the wheeling of
20 electricity for others.

21 **Sec. 7.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to read
22 as follows:

23 For the purposes of this chapter, unless otherwise required by the
24 context:

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

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

33 (3) "Railroad car business" means the business of operating stock
34 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
35 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
36 other kinds of cars used for transportation of property or persons upon

1 the line of any railroad operated in this state when such railroad is
2 not owned or leased by the person engaging 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))~~ (6) "Gas distribution business" means the business of
12 operating a plant or system for the production or distribution for hire
13 or sale of gas, whether manufactured or natural.

14 ~~((8))~~ (7) "Motor transportation business" means the business
15 (except urban transportation business) of operating any motor propelled
16 vehicle by which persons or property of others are conveyed for hire,
17 and includes, but is not limited to, the operation of any motor
18 propelled vehicle as an auto transportation company (except urban
19 transportation business), common carrier or contract carrier as defined
20 by RCW 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))~~ (8) "Urban transportation business" means the business of
24 operating any vehicle for public use in the conveyance of persons or
25 property for hire, insofar as (a) operating entirely within the
26 corporate limits of any city or town, or within five miles of the
27 corporate limits thereof, or (b) operating entirely within and between
28 cities and towns whose corporate limits are not more than five miles
29 apart or within five miles of the corporate limits of either thereof.
30 Included herein, but without limiting the scope hereof, is the business
31 of operating passenger vehicles of every type and also the business of
32 operating cartage, pickup, or delivery services, including in such
33 services the collection and distribution of property arriving from or
34 destined to a point within or without the state, whether or not such
35 collection or distribution be made by the person performing a local or
36 interstate line-haul of such property.

37 ~~((10))~~ (9) "Public service business" means any of the businesses
38 defined in subdivisions (1), (2), (3), (4), (5), (6), (7), and (8) ~~((7
39 and (9))~~) or any business subject to control by the state, or having

1 the powers of eminent domain and the duties incident thereto, or any
2 business hereafter declared by the legislature to be of a public
3 service nature, except telephone business as defined in RCW 82.04.065
4 and low-level radioactive waste site operating companies as redefined
5 in RCW 81.04.010. It includes, among others, without limiting the
6 scope hereof: Airplane transportation, boom, dock, ferry, pipe line,
7 toll bridge, toll logging road, water transportation and wharf
8 businesses.

9 ~~((11))~~ (10) "Tugboat business" means the business of operating
10 tugboats, towboats, wharf boats or similar vessels in the towing or
11 pushing of vessels, barges or rafts for hire.

12 ~~((12))~~ (11) "Gross income" means the value proceeding or accruing
13 from the performance of the particular public service or transportation
14 business involved, including operations incidental thereto, but without
15 any deduction on account of the cost of the commodity furnished or
16 sold, the cost of materials used, labor costs, interest, discount,
17 delivery costs, taxes, or any other expense whatsoever paid or accrued
18 and without any deduction on account of losses.

19 ~~((13))~~ (12) The meaning attributed, in chapter 82.04 RCW, to the
20 term "tax year," "person," "value proceeding or accruing," "business,"
21 "engaging in business," "in this state," "within this state," "cash
22 discount" and "successor" shall apply equally in the provisions of this
23 chapter.

24 **Sec. 8.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read
25 as follows:

26 (1) There is levied and there shall be collected from every person
27 a tax for the act or privilege of engaging within this state in any one
28 or more of the businesses herein mentioned. The tax shall be equal to
29 the gross income of the business, multiplied by the rate set out after
30 the business, as follows:

31 (a) Express, sewerage collection, and telegraph businesses: Three
32 and six-tenths percent;

33 (b) ~~((Light and power business: Three and sixty-two one-hundredths~~
34 ~~percent;~~

35 ~~(c))~~ Gas distribution business: Three and six-tenths percent;

36 ~~((d))~~ (c) Urban transportation business: Six-tenths of one
37 percent;

1 (~~(e)~~) (d) Vessels under sixty-five feet in length, except
2 tugboats, operating upon the waters within the state: Six-tenths of
3 one percent;

4 (~~(f)~~) (e) Motor transportation, railroad, railroad car, and
5 tugboat businesses, and all public service businesses other than ones
6 mentioned above: One and eight-tenths of one percent;

7 (~~(g)~~) (f) Water distribution business: Four and seven-tenths
8 percent.

9 (2) An additional tax is imposed equal to the rate specified in RCW
10 82.02.030 multiplied by the tax payable under subsection (1) of this
11 section.

12 (3) Twenty percent of the moneys collected under subsection (1) of
13 this section on water distribution businesses and sixty percent of the
14 moneys collected under subsection (1) of this section on sewerage
15 collection businesses shall be deposited in the public works assistance
16 account created in RCW 43.155.050.

17 **Sec. 9.** RCW 82.16.050 and 2000 c 245 s 1 are each amended to read
18 as follows:

19 In computing tax there may be deducted from the gross income the
20 following items:

21 (1) Amounts derived by municipally owned or operated public service
22 businesses, directly from taxes levied for the support or maintenance
23 thereof: PROVIDED, That this section shall not be construed to exempt
24 service charges which are spread on the property tax rolls and
25 collected as taxes;

26 (2) Amounts derived from the sale of commodities to persons in the
27 same public service business as the seller, for resale as such within
28 this state. This deduction is allowed only with respect to water
29 distribution, gas distribution or other public service businesses which
30 furnish water, gas or any other commodity in the performance of public
31 service businesses;

32 (3) Amounts actually paid by a taxpayer to another person taxable
33 under this chapter as the latter's portion of the consideration due for
34 services furnished jointly by both, if the total amount has been
35 credited to and appears in the gross income reported for tax by the
36 former;

37 (4) The amount of cash discount actually taken by the purchaser or
38 customer;

1 (5) The amount of credit losses actually sustained by taxpayers
2 whose regular books of accounts are kept upon an accrual basis;

3 (6) Amounts derived from business which the state is prohibited
4 from taxing under the Constitution of this state or the Constitution or
5 laws of the United States;

6 (7) Amounts derived from the distribution of water through an
7 irrigation system, for irrigation purposes;

8 (8) Amounts derived from the transportation of commodities from
9 points of origin in this state to final destination outside this state,
10 or from points of origin outside this state to final destination in
11 this state, with respect to which the carrier grants to the shipper the
12 privilege of stopping the shipment in transit at some point in this
13 state for the purpose of storing, manufacturing, milling, or other
14 processing, and thereafter forwards the same commodity, or its
15 equivalent, in the same or converted form, under a through freight rate
16 from point of origin to final destination; and amounts derived from the
17 transportation of commodities from points of origin in the state to an
18 export elevator, wharf, dock or ship side on tidewater or navigable
19 tributaries thereto from which such commodities are forwarded, without
20 intervening transportation, by vessel, in their original form, to
21 interstate or foreign destinations: PROVIDED, That no deduction will
22 be allowed when the point of origin and the point of delivery to such
23 an export elevator, wharf, dock, or ship side are located within the
24 corporate limits of the same city or town;

25 ~~(9) ((Amounts derived from the production, sale, or transfer of
26 electrical energy for resale within or outside the state or for
27 consumption outside the state;~~

28 ~~(10))~~ Amounts derived from the distribution of water by a
29 nonprofit water association and used for capital improvements by that
30 nonprofit water association;

31 ~~((11))~~ (10) Amounts paid by a sewerage collection business
32 taxable under RCW 82.16.020(1)(a) to a person taxable under chapter
33 82.04 RCW for the treatment or disposal of sewage.

34 **Sec. 10.** RCW 82.16.090 and 1988 c 228 s 1 are each amended to read
35 as follows:

36 Any customer billing issued by a ~~((light or power business or))~~ gas
37 distribution business that serves a total of more than twenty thousand

1 customers and operates within the state shall include the following
2 information:

3 (1) The rates and amounts of taxes paid directly by the customer
4 upon products or services rendered by the (~~light and power business~~
5 ~~or~~) gas distribution business; and

6 (2) The rate, origin and approximate amount of each tax levied upon
7 the revenue of the (~~light and power business or~~) gas distribution
8 business and added as a component of the amount charged to the
9 customer. Taxes based upon revenue of the (~~light and power business~~
10 ~~or~~) gas distribution business to be listed on the customer billing
11 need not include taxes levied by the federal government or taxes levied
12 under chapter(~~s 54.287~~) 80.24(~~7~~) or 82.04 RCW.

13 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.04 RCW
14 to read as follows:

15 EXEMPTIONS--ELECTRICAL ENERGY. This chapter shall not apply to any
16 person with respect to the business of operating a plant or system for
17 the generation, production, or distribution of electrical energy for
18 hire or sale and/or for the wheeling of electricity for others.

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 84.36 RCW
20 to read as follows:

21 Property owned or used by a person for the business of operating a
22 plant or system for the generation, production, or distribution of
23 electrical energy for hire or sale and/or for the wheeling of
24 electricity for others, is exempt from taxation.

25 NEW SECTION. **Sec. 13.** A new section is added to chapter 84.55 RCW
26 to read as follows:

27 The levy for a taxing district in any year shall be reduced as
28 necessary to prevent exemptions under section 12 of this act from
29 resulting in a higher tax rate than would have occurred without the
30 exemptions.

31 **Sec. 14.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to read
32 as follows:

33 (1) No city or town may impose a franchise fee or any other fee or
34 charge of whatever nature or description upon the (~~light and power,~~
35 ~~or~~) gas distribution (~~(businesses)~~) business, as defined in RCW

1 82.16.010, or telephone business, as defined in RCW 82.04.065, or
2 service provider for use of the right of way, except:

3 (a) A tax authorized by RCW 35.21.865 may be imposed;

4 (b) A fee may be charged to such businesses or service providers
5 that recovers actual administrative expenses incurred by a city or town
6 that are directly related to receiving and approving a permit, license,
7 and franchise, to inspecting plans and construction, or to the
8 preparation of a detailed statement pursuant to chapter 43.21C RCW;

9 (c) Taxes permitted by state law on service providers;

10 (d) Franchise requirements and fees for cable television services
11 as allowed by federal law; and

12 (e) A site-specific charge pursuant to an agreement between the
13 city or town and a service provider of personal wireless services
14 acceptable to the parties for:

15 (i) The placement of new structures in the right of way regardless
16 of height, unless the new structure is the result of a mandated
17 relocation in which case no charge will be imposed if the previous
18 location was not charged;

19 (ii) The placement of replacement structures when the replacement
20 is necessary for the installation or attachment of wireless facilities,
21 and the overall height of the replacement structure and the wireless
22 facility is more than sixty feet; or

23 (iii) The placement of personal wireless facilities on structures
24 owned by the city or town located in the right of way. However, a
25 site-specific charge shall not apply to the placement of personal
26 wireless facilities on existing structures, unless the structure is
27 owned by the city or town.

28 A city or town is not required to approve the use permit for the
29 placement of a facility for personal wireless services that meets one
30 of the criteria in this subsection absent such an agreement. If the
31 parties are unable to agree on the amount of the charge, the service
32 provider may submit the amount of the charge to binding arbitration by
33 serving notice on the city or town. Within thirty days of receipt of
34 the initial notice, each party shall furnish a list of acceptable
35 arbitrators. The parties shall select an arbitrator; failing to agree
36 on an arbitrator, each party shall select one arbitrator and the two
37 arbitrators shall select a third arbitrator for an arbitration panel.
38 The arbitrator or arbitrators shall determine the charge based on
39 comparable siting agreements involving public land and rights of way.

1 The arbitrator or arbitrators shall not decide any other disputed
2 issues, including but not limited to size, location, and zoning
3 requirements. Costs of the arbitration, including compensation for the
4 arbitrator's services, must be borne equally by the parties
5 participating in the arbitration and each party shall bear its own
6 costs and expenses, including legal fees and witness expenses, in
7 connection with the arbitration proceeding.

8 (2) No city or town may impose a franchise fee or any other fee or
9 charge of whatever nature or description upon the business of operating
10 a plant or system for the generation, production, or distribution of
11 electrical energy for hire or sale and/or for the wheeling of
12 electricity for others or upon a person for amounts received for the
13 sale of electrical energy for resale within or outside the state.

14 (3) Subsection (1) of this section does not prohibit franchise fees
15 imposed on an electrical energy, natural gas, or telephone business, by
16 contract existing on April 20, 1982, with a city or town, for the
17 duration of the contract, but the franchise fees shall be considered
18 taxes for the purposes of the limitations established in RCW 35.21.865
19 and 35.21.870 to the extent the fees exceed the costs allowable under
20 subsection (1) of this section.

21 **Sec. 15.** RCW 35.21.865 and 1983 c 99 s 4 are each amended to read
22 as follows:

23 No city or town may change the rate of tax it imposes on the
24 privilege of conducting (~~(an electrical energy,)~~) a natural gas(~~(7)~~) or
25 telephone business which change applies to business activities
26 occurring before the effective date of the change, and no rate change
27 may take effect before the expiration of sixty days following the
28 enactment of the ordinance establishing the change except as provided
29 in RCW 35.21.870.

30 **Sec. 16.** RCW 35.21.870 and 1984 c 225 s 6 are each amended to read
31 as follows:

32 (1) No city or town may impose a tax on the privilege of conducting
33 (~~(an electrical energy,)~~) a natural gas, steam energy, or telephone
34 business at a rate which exceeds six percent unless the rate is first
35 approved by a majority of the voters of the city or town voting on such
36 a proposition.

1 (2) If a city or town is imposing a rate of tax under subsection
2 (1) of this section in excess of six percent on April 20, 1982, the
3 city or town shall decrease the rate to a rate of six percent or less
4 by reducing the rate each year on or before November 1st by ordinances
5 to be effective on January 1st of the succeeding year, by an amount
6 equal to one-tenth the difference between the tax rate on April 20,
7 1982, and six percent.

8 Nothing in this subsection prohibits a city or town from reducing
9 its rates by amounts greater than the amounts required in this
10 subsection.

11 Voter approved rate increases under subsection (1) of this section
12 shall not be included in the computations under this subsection.

13 **Sec. 17.** RCW 52.18.020 and 1990 c 294 s 2 are each amended to read
14 as follows:

15 The term "personal property" for the purposes of this chapter shall
16 include every form of tangible personal property, including but not
17 limited to, all goods, chattels, stock in trade, estates, or crops:
18 PROVIDED, That all personal property not assessed and subjected to ad
19 valorem taxation under Title 84 RCW, all property under contract or for
20 which the district is receiving payment for as authorized by RCW
21 52.30.020 (~~and all property subject to the provisions of chapter 54.28~~
22 ~~RCW~~), or all property that is subject to a contract for services with
23 a fire protection district, shall be exempt from the benefit charge
24 imposed under this chapter: PROVIDED FURTHER, That the term "personal
25 property" shall not include any personal property used for farming,
26 field crops, farm equipment or livestock: AND PROVIDED FURTHER, That
27 the term "improvements to real property" shall not include permanent
28 growing crops, field improvements installed for the purpose of aiding
29 the growth of permanent crops, or other field improvements normally not
30 subject to damage by fire.

31 **Sec. 18.** RCW 82.02.030 and 1993 sp.s. c 25 s 107 are each amended
32 to read as follows:

33 The rate of the additional taxes under RCW (~~(54.28.020(2),~~
34 ~~54.28.025(2),~~) 66.24.210(2), 82.16.020(2), 82.27.020(5), and
35 82.29A.030(2) shall be seven percent.

1 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 82.16.0491 (Credit--Contributions to an electric utility
4 rural economic development revolving fund) and 1999 c 311 s 402;

5 (2) RCW 82.16.053 (Deductions in computing tax--Light and power
6 businesses) and 1996 c 145 s 1 & 1994 c 236 s 1;

7 (3) RCW 54.28.010 (Definitions) and 1977 ex.s. c 366 s 1, 1967
8 ex.s. c 26 s 22, 1959 c 274 s 1, & 1957 c 278 s 7;

9 (4) RCW 54.28.011 ("Gross revenue" defined) and 1957 c 278 s 12;

10 (5) RCW 54.28.020 (Tax imposed--Rates--Additional tax imposed) and
11 1983 2nd ex.s. c 3 s 8, 1982 1st ex.s. c 35 s 18, 1977 ex.s. c 366 s 2,
12 1959 c 274 s 2, & 1957 c 278 s 2;

13 (6) RCW 54.28.025 (Tax imposed with respect to thermal electric
14 generating facilities--Rate--Additional tax imposed) and 1983 2nd ex.s.
15 c 3 s 9, 1982 1st ex.s. c 35 s 19, & 1977 ex.s. c 366 s 6;

16 (7) RCW 54.28.030 (Districts' report to department of revenue) and
17 1977 ex.s. c 366 s 3, 1975 1st ex.s. c 278 s 30, 1959 c 274 s 3, & 1957
18 c 278 s 3;

19 (8) RCW 54.28.040 (Tax computed--Payment--Penalties--Disposition)
20 and 1996 c 149 s 16, 1982 1st ex.s. c 35 s 20, 1975 1st ex.s. c 278 s
21 31, & 1957 c 278 s 4;

22 (9) RCW 54.28.050 (Distribution of tax) and 1982 1st ex.s. c 35 s
23 21, 1980 c 154 s 8, 1977 ex.s. c 366 s 4, 1975 1st ex.s. c 278 s 32,
24 1959 c 274 s 4, & 1957 c 278 s 5;

25 (10) RCW 54.28.055 (Distribution of tax proceeds from thermal
26 electric generating facilities) and 1986 c 189 s 1, 1982 1st ex.s. c 35
27 s 22, 1979 c 151 s 165, & 1977 ex.s. c 366 s 7;

28 (11) RCW 54.28.060 (Interest) and 1996 c 149 s 12 & 1957 c 278 s 6;

29 (12) RCW 54.28.070 (Municipal taxes--May be passed on) and 1941 c
30 245 s 3;

31 (13) RCW 54.28.080 (Additional tax for payment on bonded
32 indebtedness of school districts) and 1957 c 278 s 8;

33 (14) RCW 54.28.090 (Deposit of funds to credit of certain taxing
34 districts) and 1980 c 154 s 9, 1977 ex.s. c 366 s 5, & 1957 c 278 s 10;

35 (15) RCW 54.28.100 (Use of moneys received by taxing district) and
36 1957 c 278 s 11;

37 (16) RCW 54.28.110 (Voluntary payments by district to taxing entity
38 for removal of property from tax rolls) and 1957 c 278 s 13; and

1 (17) RCW 54.28.120 (Amount of tax if district acquires electric
2 utility property from public service company) and 1957 c 278 s 14.

3 NEW SECTION. **Sec. 20.** Sections 1 through 6 of this act constitute
4 a new chapter in Title 82 RCW.

5 NEW SECTION. **Sec. 21.** Section 12 of this act applies to taxes
6 levied for collection in 2002 and thereafter.

7 NEW SECTION. **Sec. 22.** Captions used in sections 1 through 6 and
8 11 of this act are not any part of the law.

9 NEW SECTION. **Sec. 23.** This act takes effect January 1, 2002.

--- END ---

APPENDIX 4

1 **Sec. 1.** RCW 43.21F.015 and 1994 c 207 s 3 are each amended to read
2 as follows:

3 It is the policy of the state of Washington that:

4 (1) The development and use of a diverse array of energy resources
5 with emphasis on conservation, renewable energy resources, and new
6 generation technologies shall be encouraged;

7 (2) The supply of energy shall be sufficient to insure the health
8 and economic welfare of its citizens that includes meeting projected
9 demand for Washington as well as other states or foreign countries
10 having an impact on this state's energy supply;

11 (3) The development and use of energy resources shall be consistent
12 with the statutory environmental policies of the state;

13 (4) Energy conservation and elimination of wasteful and uneconomic
14 uses of energy and materials shall be encouraged, and this conservation
15 should include, but is not limited to, resource recovery that achieves
16 at least a doubling of previous resource utilization or eighty percent
17 efficiency and materials recycling;

18 (5) In energy emergency shortage situations, energy requirements to
19 maintain ((the)) critical public health, safety, and welfare activities
20 shall be given priority in the allocation of energy resources while
21 curtailing noncritical government functions, and citizens and industry
22 shall be assisted in adjusting to the limited availability of energy in
23 order to minimize adverse impacts on their physical, social, and
24 economic well being;

25 (6) State government shall provide a source of impartial and
26 objective information in order that this energy policy may be enhanced;
27 and

28 (7) The state energy strategy shall provide primary guidance for
29 implementation of the state's energy policy.

30 **NEW SECTION.** **Sec. 2.** A new section is added to chapter 43.21F RCW
31 to read as follows:

32 (1) The Washington state strategic energy planning commission is
33 established. The commission consists of twelve members, two of whom
34 are the Washington state representatives to the Northwest power
35 planning council and these two members shall serve as cochairs of the
36 commission. The director of the department of community, trade, and
37 economic development, or the director's designee, shall serve as a

1 member of the commission. The following members are appointed by the
2 governor:

3 (a) Three members representing investor-owned utilities, two of
4 whom represent utilities that have a six percent or greater share of
5 the revenue derived from the retail sale of electricity within the
6 state and one who represents utilities that have less than a six
7 percent share of the revenue derived from the retail sale of
8 electricity within the state;

9 (b) One member representing rural electric cooperatives;

10 (c) One member representing public utility districts;

11 (d) One member representing municipal corporations providing
12 utility services;

13 (e) One member representing environmental organizations; and

14 (f) Two members representing energy users from the general public.

15 (2) Each member appointed by the governor shall serve for a term of
16 four years and is eligible to be reappointed. Of the initial members,
17 three members must be appointed for a two-year term, three members must
18 be appointed for a three-year term, and the remainder must be appointed
19 for four-year terms.

20 (3) Members of the commission shall be compensated under RCW
21 43.03.250 and shall be reimbursed for travel expenses under RCW
22 43.03.050 and 43.03.060.

23 **Sec. 3.** RCW 43.21F.025 and 1996 c 186 s 102 are each amended to
24 read as follows:

25 (1) "Energy" means petroleum or other liquid fuels; natural or
26 synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear
27 material; electricity; solar radiation; geothermal resources;
28 hydropower; organic waste products; wind; tidal activity; any other
29 substance or process used to produce heat, light, or motion; or the
30 savings from nongeneration technologies, including conservation or
31 improved efficiency in the usage of any of the sources described in
32 this subsection;

33 (2) "Person" means an individual, partnership, joint venture,
34 private or public corporation, association, firm, public service
35 company, political subdivision, municipal corporation, government
36 agency, public utility district, joint operating agency, or any other
37 entity, public or private, however organized;

1 (3) "Director" means the director of the department of community,
2 trade, and economic development;

3 (4) "Assistant director" means the assistant director of the
4 department of community, trade, and economic development responsible
5 for the office of strategic energy ((policy activities)) planning;

6 (5) "Department" means the department of community, trade, and
7 economic development;

8 (6) "Distributor" means any person, private corporation,
9 partnership, individual proprietorship, utility, including investor-
10 owned utilities, municipal utility, public utility district, joint
11 operating agency, or cooperative, which engages in or is authorized to
12 engage in the activity of generating, transmitting, or distributing
13 energy in this state; and

14 (7) (~~"State energy strategy" means the document and energy policy~~
15 ~~direction developed under section 1, chapter 201, Laws of 1991~~
16 ~~including any related appendices.~~) "Commission" means the Washington
17 state strategic energy planning commission.

18 NEW SECTION. Sec. 4. A new section is added to chapter 43.21F RCW
19 to read as follows:

20 (1) The commission shall develop the state energy strategy that
21 shall implement the state's energy policy. Development of the state
22 energy strategy is guided by the following:

23 (a) Establishing an affordable price for energy resources;

24 (b) Using conservation and other energy sources that present the
25 least environmental impact to the state and its communities;

26 (c) Using and deploying new technologies; and

27 (d) Increasing energy reliability.

28 (2) The commission shall assess the state's demand for production
29 and distribution of energy, both in-state and for export out-of-state,
30 during the next ten years.

31 (3) The commission shall allocate by county a portion of the
32 assessed demand to be sited in the county.

33 (4) The commission shall develop a process to allow a city or
34 county legislative authority to propose and designate sites and types
35 of energy production to meet the demand assessment determined under
36 subsection (2) of this section.

37 (5) The city or county legislative authority must authorize, within
38 one year from the effective date of this act through zoning and other

1 ordinances, sites that can accommodate siting of the preferred energy
2 generation. The commission shall provide technical assistance if
3 requested by the city or county legislative authority.

4 (6) Any demand not sited by a city or county legislative authority
5 shall be sited by the commission which shall function as an energy
6 siting authority only for those sites not selected and designated by a
7 city or county.

8 (7) The commission may delegate its duties to be performed by the
9 department.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21F RCW
11 to read as follows:

12 In addition to other powers and duties granted to the commission,
13 the commission shall:

14 (1) Advocate the state energy strategy to the Northwest power
15 planning council and seek agreements that meet the state's strategic
16 energy goals with regional partners;

17 (2) Seek through the Pacific Northwest economic region alliances
18 and partnerships with the Canadian provinces of British Columbia,
19 Alberta, and the Yukon Territory to achieve the state's strategic
20 goals; and

21 (3) Represent the state of Washington in any forums where
22 agreements will be formed that impact the state's energy policy and
23 strategy.

24 **Sec. 6.** RCW 43.21F.045 and 1996 c 186 s 103 are each amended to
25 read as follows:

26 (1) The (~~department shall supervise and administer energy-related~~
27 ~~activities as specified in RCW 43.330.904 and~~) commission shall advise
28 the governor and the legislature with respect to energy matters
29 affecting the state.

30 (2) In addition to other powers and duties granted to the
31 (~~department~~) commission, the (~~department~~) commission shall have the
32 following powers and duties:

33 (a) Prepare and update contingency plans for implementation in the
34 event of energy shortages or emergencies. The plans shall conform to
35 chapter 43.21G RCW and shall include procedures for determining when
36 these shortages or emergencies exist, the state officers and agencies
37 to participate in the determination, and actions to be taken by various

1 agencies and officers of state government in order to reduce hardship
2 and maintain the general welfare during these emergencies. The
3 (~~department~~) commission shall coordinate the activities undertaken
4 pursuant to this subsection with other persons. The components of
5 plans that require legislation for their implementation shall be
6 presented to the legislature in the form of proposed legislation at the
7 earliest practicable date. The (~~department~~) commission shall report
8 to the governor and the legislature on probable, imminent, and existing
9 energy shortages, and shall administer energy allocation and
10 curtailment programs in accordance with chapter 43.21G RCW.

11 ~~(b) ((Establish and maintain a central repository in state
12 government for collection of existing data on energy resources,
13 including:~~

14 ~~(i) Supply, demand, costs, utilization technology, projections, and
15 forecasts;~~

16 ~~(ii) Comparative costs of alternative energy sources, uses, and
17 applications; and~~

18 ~~(iii) Inventory data on energy research projects in the state
19 conducted under public and/or private auspices, and the results
20 thereof.~~

21 ~~(e))~~ Coordinate federal energy programs appropriate for state-
22 level implementation, carry out such energy programs as are assigned to
23 it by the governor or the legislature, and monitor federally funded
24 local energy programs as required by federal or state regulations.

25 ~~((d))~~ (c) Develop energy policy recommendations for consideration
26 by the governor and the legislature.

27 ~~((e) Provide assistance, space, and other support as may be
28 necessary for the activities of the state's two representatives to the
29 Pacific northwest electric power and conservation planning council. To
30 the extent consistent with federal law, the director shall request that
31 Washington's council members request the administrator of the
32 Bonneville power administration to reimburse the state for the expenses
33 associated with the support as provided in the Pacific Northwest
34 Electric Power Planning and Conservation Act (P.L. 96-501).~~

35 ~~(f))~~ (d) Cooperate with state agencies, other governmental units,
36 and private interests in the prioritization and implementation of the
37 state energy strategy elements and on other energy matters.

38 ~~((g))~~ (e) Serve as the official state agency responsible for
39 coordinating implementation of the state energy strategy.

1 ~~((h))~~ (f) No later than December 1, 1982, and by December 1st of
2 each even-numbered year thereafter, prepare and transmit to the
3 governor and the appropriate committees of the legislature a report on
4 the implementation of the state energy strategy and other important
5 energy issues, as appropriate.

6 ~~((i))~~ (g) Provide support for increasing cost-effective energy
7 conservation, including assisting in the removal of impediments to
8 timely implementation.

9 ~~((j))~~ (h) Provide support for the development of cost-effective
10 energy resources including assisting in the removal of impediments to
11 timely construction.

12 ~~((k))~~ (i) Adopt rules, under chapter 34.05 RCW, necessary to
13 carry out the powers and duties enumerated in this chapter.

14 ~~((l) Provide administrative assistance, space, and other support
15 as may be necessary for the activities of the energy facility site
16 evaluation council, as provided for in RCW 80.50.030.~~

17 ~~(m) Appoint staff as may be needed to administer energy policy
18 functions and manage energy facility site evaluation council
19 activities. These employees are exempt from the provisions of chapter
20 41.06 RCW.)~~

21 (3) To the extent the powers and duties set out under this section
22 relate to energy education, applied research, and technology transfer
23 programs they are transferred to Washington State University.

24 (4) To the extent the powers and duties set out under this section
25 relate to energy efficiency in public buildings they are transferred to
26 the department of general administration.

27 **Sec. 7.** RCW 41.06.070 and 1998 c 245 s 40 are each amended to read
28 as follows:

29 (1) The provisions of this chapter do not apply to:

30 (a) The members of the legislature or to any employee of, or
31 position in, the legislative branch of the state government including
32 members, officers, and employees of the legislative council, joint
33 legislative audit and review committee, statute law committee, and any
34 interim committee of the legislature;

35 (b) The justices of the supreme court, judges of the court of
36 appeals, judges of the superior courts or of the inferior courts, or to
37 any employee of, or position in the judicial branch of state
38 government;

1 (c) Officers, academic personnel, and employees of technical
2 colleges;

3 (d) The officers of the Washington state patrol;

4 (e) Elective officers of the state;

5 (f) The chief executive officer of each agency;

6 (g) In the departments of employment security and social and health
7 services, the director and the director's confidential secretary; in
8 all other departments, the executive head of which is an individual
9 appointed by the governor, the director, his or her confidential
10 secretary, and his or her statutory assistant directors;

11 (h) In the case of a multimember board, commission, or committee,
12 whether the members thereof are elected, appointed by the governor or
13 other authority, serve ex officio, or are otherwise chosen:

14 (i) All members of such boards, commissions, or committees;

15 (ii) If the members of the board, commission, or committee serve on
16 a part-time basis and there is a statutory executive officer: The
17 secretary of the board, commission, or committee; the chief executive
18 officer of the board, commission, or committee; and the confidential
19 secretary of the chief executive officer of the board, commission, or
20 committee;

21 (iii) If the members of the board, commission, or committee serve
22 on a full-time basis: The chief executive officer or administrative
23 officer as designated by the board, commission, or committee; and a
24 confidential secretary to the chair of the board, commission, or
25 committee;

26 (iv) If all members of the board, commission, or committee serve ex
27 officio: The chief executive officer; and the confidential secretary
28 of such chief executive officer;

29 (i) The confidential secretaries and administrative assistants in
30 the immediate offices of the elective officers of the state;

31 (j) Assistant attorneys general;

32 (k) Commissioned and enlisted personnel in the military service of
33 the state;

34 (l) Inmate, student, part-time, or temporary employees, and part-
35 time professional consultants, as defined by the Washington personnel
36 resources board;

37 (m) The public printer or to any employees of or positions in the
38 state printing plant;

1 (n) Officers and employees of the Washington state fruit
2 commission;

3 (o) Officers and employees of the Washington state apple
4 advertising commission;

5 (p) Officers and employees of the Washington state dairy products
6 commission;

7 (q) Officers and employees of the Washington tree fruit research
8 commission;

9 (r) Officers and employees of the Washington state beef commission;

10 (s) Officers and employees of any commission formed under chapter
11 15.66 RCW;

12 ~~(t) ((Officers and employees of the state wheat commission formed
13 under chapter 15.63 RCW;~~

14 ~~(u))~~ Officers and employees of agricultural commissions formed
15 under chapter 15.65 RCW;

16 ~~((+v))~~ (u) Officers and employees of the nonprofit corporation
17 formed under chapter 67.40 RCW;

18 ~~((+w))~~ (v) Executive assistants for personnel administration and
19 labor relations in all state agencies employing such executive
20 assistants including but not limited to all departments, offices,
21 commissions, committees, boards, or other bodies subject to the
22 provisions of this chapter and this subsection shall prevail over any
23 provision of law inconsistent herewith unless specific exception is
24 made in such law;

25 ~~((+x))~~ (w) In each agency with fifty or more employees: Deputy
26 agency heads, assistant directors or division directors, and not more
27 than three principal policy assistants who report directly to the
28 agency head or deputy agency heads;

29 ~~((+y))~~ (x) All employees of the marine employees' commission;

30 ~~((+z) Up to a total of five senior staff positions of the western
31 library network under chapter 27.26 RCW responsible for formulating
32 policy or for directing program management of a major administrative
33 unit. This subsection (1)(z) shall expire on June 30, 1997;~~

34 ~~(aa) Staff employed by the department of community, trade, and
35 economic development to administer energy policy functions and manage
36 energy site evaluation council activities under RCW 43.21F.045(2) (m);~~

37 ~~(bb))~~ (y) Staff employed by Washington State University to
38 administer energy education, applied research, and technology transfer
39 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

1 (2) The following classifications, positions, and employees of
2 institutions of higher education and related boards are hereby exempted
3 from coverage of this chapter:

4 (a) Members of the governing board of each institution of higher
5 education and related boards, all presidents, vice-presidents, and
6 their confidential secretaries, administrative, and personal
7 assistants; deans, directors, and chairs; academic personnel; and
8 executive heads of major administrative or academic divisions employed
9 by institutions of higher education; principal assistants to executive
10 heads of major administrative or academic divisions; other managerial
11 or professional employees in an institution or related board having
12 substantial responsibility for directing or controlling program
13 operations and accountable for allocation of resources and program
14 results, or for the formulation of institutional policy, or for
15 carrying out personnel administration or labor relations functions,
16 legislative relations, public information, development, senior computer
17 systems and network programming, or internal audits and investigations;
18 and any employee of a community college district whose place of work is
19 one which is physically located outside the state of Washington and who
20 is employed pursuant to RCW 28B.50.092 and assigned to an educational
21 program operating outside of the state of Washington;

22 (b) Student, part-time, or temporary employees, and part-time
23 professional consultants, as defined by the Washington personnel
24 resources board, employed by institutions of higher education and
25 related boards;

26 (c) The governing board of each institution, and related boards,
27 may also exempt from this chapter classifications involving research
28 activities, counseling of students, extension or continuing education
29 activities, graphic arts or publications activities requiring
30 prescribed academic preparation or special training as determined by
31 the board: PROVIDED, That no nonacademic employee engaged in office,
32 clerical, maintenance, or food and trade services may be exempted by
33 the board under this provision;

34 (d) Printing craft employees in the department of printing at the
35 University of Washington.

36 (3) In addition to the exemptions specifically provided by this
37 chapter, the Washington personnel resources board may provide for
38 further exemptions pursuant to the following procedures. The governor
39 or other appropriate elected official may submit requests for exemption

1 to the Washington personnel resources board stating the reasons for
2 requesting such exemptions. The Washington personnel resources board
3 shall hold a public hearing, after proper notice, on requests submitted
4 pursuant to this subsection. If the board determines that the position
5 for which exemption is requested is one involving substantial
6 responsibility for the formulation of basic agency or executive policy
7 or one involving directing and controlling program operations of an
8 agency or a major administrative division thereof, the Washington
9 personnel resources board shall grant the request and such
10 determination shall be final as to any decision made before July 1,
11 1993. The total number of additional exemptions permitted under this
12 subsection shall not exceed one percent of the number of employees in
13 the classified service not including employees of institutions of
14 higher education and related boards for those agencies not directly
15 under the authority of any elected public official other than the
16 governor, and shall not exceed a total of twenty-five for all agencies
17 under the authority of elected public officials other than the
18 governor.

19 The salary and fringe benefits of all positions presently or
20 hereafter exempted except for the chief executive officer of each
21 agency, full-time members of boards and commissions, administrative
22 assistants and confidential secretaries in the immediate office of an
23 elected state official, and the personnel listed in subsections (1)(j)
24 through ~~((v), (y), (z),)~~ (u) and (x) and (2) of this section, shall
25 be determined by the Washington personnel resources board. However,
26 beginning with changes proposed for the 1997-99 fiscal biennium,
27 changes to the classification plan affecting exempt salaries must meet
28 the same provisions for classified salary increases resulting from
29 adjustments to the classification plan as outlined in RCW 41.06.152.

30 Any person holding a classified position subject to the provisions
31 of this chapter shall, when and if such position is subsequently
32 exempted from the application of this chapter, be afforded the
33 following rights: If such person previously held permanent status in
34 another classified position, such person shall have a right of
35 reversion to the highest class of position previously held, or to a
36 position of similar nature and salary.

37 Any classified employee having civil service status in a classified
38 position who accepts an appointment in an exempt position shall have

1 the right of reversion to the highest class of position previously
2 held, or to a position of similar nature and salary.

3 A person occupying an exempt position who is terminated from the
4 position for gross misconduct or malfeasance does not have the right of
5 reversion to a classified position as provided for in this section.

6 **Sec. 8.** RCW 43.09.025 and 1995 c 301 s 2 are each amended to read
7 as follows:

8 The state auditor may appoint deputies and assistant directors as
9 necessary to carry out the duties of the office of the state auditor.
10 These individuals serve at the pleasure of the state auditor and are
11 exempt from the provisions of chapter 41.06 RCW as stated in RCW
12 41.06.070(1) ~~((+y+))~~ (w).

13 **Sec. 9.** RCW 43.21F.060 and 1996 c 186 s 105 are each amended to
14 read as follows:

15 ~~((In addition to the duties prescribed in RCW 43.21F.045,))~~ The
16 department shall have the authority to:

17 (1) Obtain all necessary and existing information from energy
18 producers, suppliers, and consumers, doing business within the state of
19 Washington, from political subdivisions in this state, or any person as
20 may be necessary to carry out the provisions of chapter 43.21G RCW:
21 PROVIDED, That if the information is available in reports made to
22 another state agency, the department shall obtain it from that agency:
23 PROVIDED FURTHER, That, to the maximum extent practicable,
24 informational requests to energy companies regulated by the utilities
25 and transportation commission shall be channeled through the commission
26 and shall be accepted in the format normally used by the companies.
27 Such information may include but not be limited to:

- 28 (a) Sales volume;
29 (b) Forecasts of energy requirements; and
30 (c) Energy costs.

31 Notwithstanding any other provision of law to the contrary,
32 information furnished under this subsection shall be confidential and
33 maintained as such, if so requested by the person providing the
34 information, if the information is proprietary.

35 It shall be unlawful to disclose such information except as
36 hereinafter provided. A violation shall be punishable, upon
37 conviction, by a fine of not more than one thousand dollars for each

1 offense. In addition, any person who wilfully or with criminal
2 negligence, as defined in RCW 9A.08.010, discloses confidential
3 information in violation of this subsection may be subject to removal
4 from office or immediate dismissal from public employment
5 notwithstanding any other provision of law to the contrary.

6 Nothing in this subsection prohibits the use of confidential
7 information to prepare statistics or other general data for publication
8 when it is so presented as to prevent identification of particular
9 persons or sources of confidential information.

10 (2) Receive and expend funds obtained from the federal government
11 or other sources by means of contracts, grants, awards, payments for
12 services, and other devices in support of the duties enumerated in this
13 chapter.

14 (3) Establish and maintain a central repository in state government
15 for collection of existing data on energy resources, including:

16 (a) Supply, demand, costs, utilization technology, projections, and
17 forecasts;

18 (b) Comparative costs of alternative energy sources, uses, and
19 applications; and

20 (c) Inventory data on energy research projects in the state
21 conducted under public and/or private auspices, and the results of the
22 projects.

23 (4) Appoint staff as may be needed to administer energy policy
24 functions activities. These employees are exempt from the provisions
25 of chapter 41.06 RCW.

26 (5) Provide assistance, space, and other support as may be
27 necessary for the activities of the state's two representatives to the
28 Pacific Northwest electric power and conservation planning council. To
29 the extent consistent with federal law, the director shall request that
30 Washington's councilmembers request the administrator of the Bonneville
31 power administration to reimburse the state for the expenses associated
32 with the support as provided in the Pacific Northwest electric power
33 planning and conservation act (P.L. 96-501).

34 NEW SECTION. Sec. 10. A new section is added to chapter 43.21F
35 RCW to read as follows:

36 The commission shall review the state energy strategy periodically
37 and report its review to the governor and the appropriate legislative
38 committees.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.21F
2 RCW to read as follows:

3 The energy fund is created in the state treasury. The energy fund
4 shall consist of all moneys generated by the additional tax established
5 under section 15(1)(a)(ii) of this act. Moneys in the fund may be
6 spent only after appropriation. Expenditures from the fund may be used
7 only for the support and operation of the commission and the office of
8 strategic energy planning, and for reimbursement of expenses paid by
9 county governments in siting energy generation facilities under section
10 4 of this act.

11 **Sec. 12.** RCW 43.84.092 and 2000 2nd sp.s. c 4 s 5 are each amended
12 to read as follows:

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

16 (2) The treasury income account shall be utilized to pay or receive
17 funds associated with federal programs as required by the federal cash
18 management improvement act of 1990. The treasury income account is
19 subject in all respects to chapter 43.88 RCW, but no appropriation is
20 required for refunds or allocations of interest earnings required by
21 the cash management improvement act. Refunds of interest to the
22 federal treasury required under the cash management improvement act
23 fall under RCW 43.88.180 and shall not require appropriation. The
24 office of financial management shall determine the amounts due to or
25 from the federal government pursuant to the cash management improvement
26 act. The office of financial management may direct transfers of funds
27 between accounts as deemed necessary to implement the provisions of the
28 cash management improvement act, and this subsection. Refunds or
29 allocations shall occur prior to the distributions of earnings set
30 forth in subsection (4) of this section.

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

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

5 (a) The following accounts and funds shall receive their
6 proportionate share of earnings based upon each account's and fund's
7 average daily balance for the period: The capitol building
8 construction account, the Cedar River channel construction and
9 operation account, the Central Washington University capital projects
10 account, the charitable, educational, penal and reformatory
11 institutions account, the common school construction fund, the county
12 criminal justice assistance account, the county sales and use tax
13 equalization account, the data processing building construction
14 account, the deferred compensation administrative account, the deferred
15 compensation principal account, the department of retirement systems
16 expense account, the drinking water assistance account, the Eastern
17 Washington University capital projects account, the education
18 construction fund, the emergency reserve fund, the energy fund, the
19 federal forest revolving account, the health services account, the
20 public health services account, the health system capacity account, the
21 personal health services account, the state higher education
22 construction account, the higher education construction account, the
23 highway infrastructure account, the industrial insurance premium refund
24 account, the judges' retirement account, the judicial retirement
25 administrative account, the judicial retirement principal account, the
26 local leasehold excise tax account, the local real estate excise tax
27 account, the local sales and use tax account, the medical aid account,
28 the mobile home park relocation fund, the multimodal transportation
29 account, the municipal criminal justice assistance account, the
30 municipal sales and use tax equalization account, the natural resources
31 deposit account, the perpetual surveillance and maintenance account,
32 the public employees' retirement system plan 1 account, the public
33 employees' retirement system plan 2 account, the Puyallup tribal
34 settlement account, the resource management cost account, the site
35 closure account, the special wildlife account, the state employees'
36 insurance account, the state employees' insurance reserve account, the
37 state investment board expense account, the state investment board
38 commingled trust fund accounts, the supplemental pension account, the
39 teachers' retirement system plan 1 account, the teachers' retirement

1 system combined plan 2 and plan 3 account, the tobacco prevention and
2 control account, the tobacco settlement account, the transportation
3 infrastructure account, the tuition recovery trust fund, the University
4 of Washington bond retirement fund, the University of Washington
5 building account, the volunteer fire fighters' and reserve officers'
6 relief and pension principal fund, the volunteer fire fighters' and
7 reserve officers' administrative fund, the Washington judicial
8 retirement system account, the Washington law enforcement officers' and
9 fire fighters' system plan 1 retirement account, the Washington law
10 enforcement officers' and fire fighters' system plan 2 retirement
11 account, the Washington school employees' retirement system combined
12 plan 2 and 3 account, the Washington state health insurance pool
13 account, the Washington state patrol retirement account, the Washington
14 State University building account, the Washington State University bond
15 retirement fund, the water pollution control revolving fund, and the
16 Western Washington University capital projects account. Earnings
17 derived from investing balances of the agricultural permanent fund, the
18 normal school permanent fund, the permanent common school fund, the
19 scientific permanent fund, and the state university permanent fund
20 shall be allocated to their respective beneficiary accounts. All
21 earnings to be distributed under this subsection (4) (a) shall first be
22 reduced by the allocation to the state treasurer's service fund
23 pursuant to RCW 43.08.190.

24 (b) The following accounts and funds shall receive eighty percent
25 of their proportionate share of earnings based upon each account's or
26 fund's average daily balance for the period: The aeronautics account,
27 the aircraft search and rescue account, the county arterial
28 preservation account, the department of licensing services account, the
29 essential rail assistance account, the ferry bond retirement fund, the
30 grade crossing protective fund, the high capacity transportation
31 account, the highway bond retirement fund, the highway safety account,
32 the motor vehicle fund, the motorcycle safety education account, the
33 pilotage account, the public transportation systems account, the Puget
34 Sound capital construction account, the Puget Sound ferry operations
35 account, the recreational vehicle account, the rural arterial trust
36 account, the safety and education account, the special category C
37 account, the state patrol highway account, the transportation equipment
38 fund, the transportation fund, the transportation improvement account,

1 the transportation improvement board bond retirement account, and the
2 urban arterial trust account.

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

6 **Sec. 13.** RCW 43.84.092 and 2000 2nd sp.s. c 4 s 6 are each amended
7 to read as follows:

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

11 (2) The treasury income account shall be utilized to pay or receive
12 funds associated with federal programs as required by the federal cash
13 management improvement act of 1990. The treasury income account is
14 subject in all respects to chapter 43.88 RCW, but no appropriation is
15 required for refunds or allocations of interest earnings required by
16 the cash management improvement act. Refunds of interest to the
17 federal treasury required under the cash management improvement act
18 fall under RCW 43.88.180 and shall not require appropriation. The
19 office of financial management shall determine the amounts due to or
20 from the federal government pursuant to the cash management improvement
21 act. The office of financial management may direct transfers of funds
22 between accounts as deemed necessary to implement the provisions of the
23 cash management improvement act, and this subsection. Refunds or
24 allocations shall occur prior to the distributions of earnings set
25 forth in subsection (4) of this section.

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

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

1 (a) The following accounts and funds shall receive their
2 proportionate share of earnings based upon each account's and fund's
3 average daily balance for the period: The capitol building
4 construction account, the Cedar River channel construction and
5 operation account, the Central Washington University capital projects
6 account, the charitable, educational, penal and reformatory
7 institutions account, the common school construction fund, the county
8 criminal justice assistance account, the county sales and use tax
9 equalization account, the data processing building construction
10 account, the deferred compensation administrative account, the deferred
11 compensation principal account, the department of retirement systems
12 expense account, the drinking water assistance account, the Eastern
13 Washington University capital projects account, the education
14 construction fund, the emergency reserve fund, the energy fund, the
15 federal forest revolving account, the health services account, the
16 public health services account, the health system capacity account, the
17 personal health services account, the state higher education
18 construction account, the higher education construction account, the
19 highway infrastructure account, the industrial insurance premium refund
20 account, the judges' retirement account, the judicial retirement
21 administrative account, the judicial retirement principal account, the
22 local leasehold excise tax account, the local real estate excise tax
23 account, the local sales and use tax account, the medical aid account,
24 the mobile home park relocation fund, the multimodal transportation
25 account, the municipal criminal justice assistance account, the
26 municipal sales and use tax equalization account, the natural resources
27 deposit account, the perpetual surveillance and maintenance account,
28 the public employees' retirement system plan 1 account, the public
29 employees' retirement system combined plan 2 and plan 3 account, the
30 Puyallup tribal settlement account, the resource management cost
31 account, the site closure account, the special wildlife account, the
32 state employees' insurance account, the state employees' insurance
33 reserve account, the state investment board expense account, the state
34 investment board commingled trust fund accounts, the supplemental
35 pension account, the teachers' retirement system plan 1 account, the
36 teachers' retirement system combined plan 2 and plan 3 account, the
37 tobacco prevention and control account, the tobacco settlement account,
38 the transportation infrastructure account, the tuition recovery trust
39 fund, the University of Washington bond retirement fund, the University

1 of Washington building account, the volunteer fire fighters' and
2 reserve officers' relief and pension principal fund, the volunteer fire
3 fighters' and reserve officers' administrative fund, the Washington
4 judicial retirement system account, the Washington law enforcement
5 officers' and fire fighters' system plan 1 retirement account, the
6 Washington law enforcement officers' and fire fighters' system plan 2
7 retirement account, the Washington school employees' retirement system
8 combined plan 2 and 3 account, the Washington state health insurance
9 pool account, the Washington state patrol retirement account, the
10 Washington State University building account, the Washington State
11 University bond retirement fund, the water pollution control revolving
12 fund, and the Western Washington University capital projects account.
13 Earnings derived from investing balances of the agricultural permanent
14 fund, the normal school permanent fund, the permanent common school
15 fund, the scientific permanent fund, and the state university permanent
16 fund shall be allocated to their respective beneficiary accounts. All
17 earnings to be distributed under this subsection (4)(a) shall first be
18 reduced by the allocation to the state treasurer's service fund
19 pursuant to RCW 43.08.190.

20 (b) The following accounts and funds shall receive eighty percent
21 of their proportionate share of earnings based upon each account's or
22 fund's average daily balance for the period: The aeronautics account,
23 the aircraft search and rescue account, the county arterial
24 preservation account, the department of licensing services account, the
25 essential rail assistance account, the ferry bond retirement fund, the
26 grade crossing protective fund, the high capacity transportation
27 account, the highway bond retirement fund, the highway safety account,
28 the motor vehicle fund, the motorcycle safety education account, the
29 pilotage account, the public transportation systems account, the Puget
30 Sound capital construction account, the Puget Sound ferry operations
31 account, the recreational vehicle account, the rural arterial trust
32 account, the safety and education account, the special category C
33 account, the state patrol highway account, the transportation equipment
34 fund, the transportation fund, the transportation improvement account,
35 the transportation improvement board bond retirement account, and the
36 urban arterial trust account.

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

1

PART II

2 NEW SECTION. **Sec. 14.** The definitions in this section apply
3 throughout this chapter unless the context clearly requires otherwise.

4 (1) "Customer" or "purchaser" means a person who acquires for
5 consideration electricity for use or consumption and not for resale.

6 (2) "Distribution services provider" means a person controlling or
7 operating distribution facilities for distribution of electricity to
8 the public. A distribution services provider includes a purchaser who
9 takes electricity directly from a transmission line and a purchaser who
10 generates electricity for the purchaser's own use but does not include
11 electricity generated by the purchaser for noncommercial use or for
12 agricultural use.

13 (3) "Person" is defined as provided in RCW 82.04.030.

14 (4) "Transmission services provider" means a person controlling or
15 operating transmission facilities.

16 (5) "Transmission facilities" means any facilities that are used to
17 provide transmission services as determined by the utilities and
18 transportation commission.

19 NEW SECTION. **Sec. 15.** (1)(a) Except as provided in subsection (3)
20 of this section, a wholesale energy transaction tax is imposed upon
21 electricity transmitted within the state as provided in this section.

22 (i) The tax is imposed at a rate of cents per kilowatt hour
23 of electricity transmitted by a transmission services provider in the
24 state.

25 (ii) An additional tax is imposed at a rate of of a cent
26 per kilowatt hour of electricity transmitted by the transmission
27 services provider in the state.

28 (b) For electricity produced in the state for delivery outside of
29 the state, the taxpayer is the person making a sale of electricity for
30 delivery outside the state. The transmission services provider shall
31 collect the tax from the taxpayer based upon the kilowatt hours
32 introduced onto transmission lines from the electrical generation
33 facility. The amount of kilowatt hours subject to tax must be reduced
34 by five percent to compensate for transmission line losses.

35 (c) For electricity produced in the state for delivery within the
36 state, the taxpayer is the distribution services provider. The
37 transmission services provider shall collect the tax based upon the

1 amount of kilowatt hours of electricity delivered to the distribution
2 services provider.

3 (d) For electricity produced outside the state for delivery inside
4 the state, the taxpayer is the distribution services provider. The
5 transmission services provider shall collect the tax based upon the
6 amount of kilowatt hours of electricity delivered to the distribution
7 services provider.

8 (2)(a) If more than one transmission services provider transmits
9 electricity, the last transmission services provider transmitting or
10 delivering the electricity shall collect the tax.

11 (b) If the transmission services provider is an agency of the
12 United States government, the distribution services provider receiving
13 the electricity shall self-assess the tax subject to the provisions of
14 this chapter.

15 (c) If an electrical generation facility located within the state
16 produces electricity for sale inside and outside the state, sales
17 within the state are considered to have come from electricity produced
18 within the state for purposes of the tax imposed by this section.

19 (3)(a) Electricity transmitted through the state that is not
20 produced or delivered in the state is exempt from the tax imposed by
21 this section.

22 (b) Electricity produced in the state by an agency of the United
23 States government for delivery outside of the state is exempt from the
24 tax imposed by this section.

25 (c) Electricity delivered to a purchaser that receives its power
26 directly from a transmission or distribution facility owned by an
27 entity of the United States government, or electricity that is
28 transmitted exclusively on transmission or distribution facilities
29 owned by an entity of the United States government, is exempt from the
30 tax imposed by this section.

31 (4) A distribution services provider is allowed to recover the tax
32 imposed by this section and the administrative costs to comply with
33 this chapter in its rates.

34 NEW SECTION. **Sec. 16.** A person, upon proof that the person has
35 paid a tax in another state on the transmission of electricity, is
36 allowed a credit against the tax imposed by this chapter if the tax has
37 been paid in another state.

1 NEW SECTION. **Sec. 17.** (1) A transmission services provider shall
2 collect the tax imposed under section 15 of this act from the taxpayer
3 and pay the tax collected to the department. If the transmission
4 services provider collects a tax in excess of the tax imposed by
5 section 15 of this act, both the tax and the excess must be remitted to
6 the department.

7 (2) (a) Tax collected under this chapter at a rate established in
8 section 15(1)(a)(i) of this act shall be deposited in the wholesale
9 energy transaction account created in section 19 of this act.

10 (b) Tax collected under this chapter as an additional tax at a rate
11 established in section 15(1)(a)(ii) of this act shall be deposited in
12 the energy fund created in section 11 of this act.

13 NEW SECTION. **Sec. 18.** Chapter 82.32 RCW applies to the taxes
14 imposed in this chapter. The tax due dates, reporting periods, and
15 return requirements applicable to chapter 82.04 RCW apply equally to
16 the taxes imposed in this chapter.

17 NEW SECTION. **Sec. 19.** (1) The wholesale energy transaction
18 account is created in the state treasury. Moneys in the account may be
19 spent only after appropriation for the purposes of distributions under
20 this section and for activities of the office of financial management
21 and the department of revenue related to administration of this
22 chapter.

23 (2) Under a distribution formula and method provided by the office
24 of financial management, money in the account shall be distributed, as
25 nearly as is practical, in a manner that replaces the fiscal year 2001
26 revenues generated by the taxation of light and power businesses, as
27 defined in subsection (3) of this section, or of electrical energy
28 businesses, as described in chapter 35.21 RCW, under the state and
29 local public utility taxes, the business and occupation tax, the public
30 utility district privilege tax, and the state and local property taxes.

31 (3) "Light and power business" means the business of operating a
32 plant or system for the generation, production, or distribution of
33 electrical energy for hire or sale and/or for the wheeling of
34 electricity for others.

35 **Sec. 20.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to read
36 as follows:

1 For the purposes of this chapter, unless otherwise required by the
2 context:

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

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

11 (3) "Railroad car business" means the business of operating stock
12 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
13 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
14 other kinds of cars used for transportation of property or persons upon
15 the line of any railroad operated in this state when such railroad is
16 not owned or leased by the person engaging in such business.

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

19 ~~(5) ("Light and power business" means the business of operating a
20 plant or system for the generation, production or distribution of
21 electrical energy for hire or sale and/or for the wheeling of
22 electricity for others.~~

23 ~~(6))~~ (6) "Telegraph business" means the business of affording
24 telegraphic communication for hire.

25 ~~((7))~~ (7) "Gas distribution business" means the business of
26 operating a plant or system for the production or distribution for hire
27 or sale of gas, whether manufactured or natural.

28 ~~((8))~~ (8) "Motor transportation business" means the business
29 (except urban transportation business) of operating any motor propelled
30 vehicle by which persons or property of others are conveyed for hire,
31 and includes, but is not limited to, the operation of any motor
32 propelled vehicle as an auto transportation company (except urban
33 transportation business), common carrier or contract carrier as defined
34 by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
35 business" shall not mean or include the transportation of logs or other
36 forest products exclusively upon private roads or private highways.

37 ~~((9))~~ (9) "Urban transportation business" means the business of
38 operating any vehicle for public use in the conveyance of persons or
39 property for hire, insofar as (a) operating entirely within the

1 corporate limits of any city or town, or within five miles of the
2 corporate limits thereof, or (b) operating entirely within and between
3 cities and towns whose corporate limits are not more than five miles
4 apart or within five miles of the corporate limits of either thereof.
5 Included herein, but without limiting the scope hereof, is the business
6 of operating passenger vehicles of every type and also the business of
7 operating cartage, pickup, or delivery services, including in such
8 services the collection and distribution of property arriving from or
9 destined to a point within or without the state, whether or not such
10 collection or distribution be made by the person performing a local or
11 interstate line-haul of such property.

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

23 ~~((+11+))~~ (10) "Tugboat business" means the business of operating
24 tugboats, towboats, wharf boats or similar vessels in the towing or
25 pushing of vessels, barges or rafts for hire.

26 ~~((+12+))~~ (11) "Gross income" means the value proceeding or accruing
27 from the performance of the particular public service or transportation
28 business involved, including operations incidental thereto, but without
29 any deduction on account of the cost of the commodity furnished or
30 sold, the cost of materials used, labor costs, interest, discount,
31 delivery costs, taxes, or any other expense whatsoever paid or accrued
32 and without any deduction on account of losses.

33 ~~((+13+))~~ (12) The meaning attributed, in chapter 82.04 RCW, to the
34 term "tax year," "person," "value proceeding or accruing," "business,"
35 "engaging in business," "in this state," "within this state," "cash
36 discount" and "successor" shall apply equally in the provisions of this
37 chapter.

1 **Sec. 21.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read
2 as follows:

3 (1) There is levied and there shall be collected from every person
4 a tax for the act or privilege of engaging within this state in any one
5 or more of the businesses herein mentioned. The tax shall be equal to
6 the gross income of the business, multiplied by the rate set out after
7 the business, as follows:

8 (a) Express, sewerage collection, and telegraph businesses: Three
9 and six-tenths percent;

10 (b) ~~((Light and power business: Three and sixty-two one-hundredths~~
11 ~~percent;~~

12 ~~((e))~~ Gas distribution business: Three and six-tenths percent;

13 ~~((d))~~ (c) Urban transportation business: Six-tenths of one
14 percent;

15 ~~((e))~~ (d) Vessels under sixty-five feet in length, except
16 tugboats, operating upon the waters within the state: Six-tenths of
17 one percent;

18 ~~((f))~~ (e) Motor transportation, railroad, railroad car, and
19 tugboat businesses, and all public service businesses other than ones
20 mentioned above: One and eight-tenths of one percent;

21 ~~((g))~~ (f) Water distribution business: Four and seven-tenths
22 percent.

23 (2) An additional tax is imposed equal to the rate specified in RCW
24 82.02.030 multiplied by the tax payable under subsection (1) of this
25 section.

26 (3) Twenty percent of the moneys collected under subsection (1) of
27 this section on water distribution businesses and sixty percent of the
28 moneys collected under subsection (1) of this section on sewerage
29 collection businesses shall be deposited in the public works assistance
30 account created in RCW 43.155.050.

31 **Sec. 22.** RCW 82.16.050 and 2000 c 245 s 1 are each amended to read
32 as follows:

33 In computing tax there may be deducted from the gross income the
34 following items:

35 (1) Amounts derived by municipally owned or operated public service
36 businesses, directly from taxes levied for the support or maintenance
37 thereof: PROVIDED, That this section shall not be construed to exempt

1 service charges which are spread on the property tax rolls and
2 collected as taxes;

3 (2) Amounts derived from the sale of commodities to persons in the
4 same public service business as the seller, for resale as such within
5 this state. This deduction is allowed only with respect to water
6 distribution, gas distribution or other public service businesses which
7 furnish water, gas or any other commodity in the performance of public
8 service businesses;

9 (3) Amounts actually paid by a taxpayer to another person taxable
10 under this chapter as the latter's portion of the consideration due for
11 services furnished jointly by both, if the total amount has been
12 credited to and appears in the gross income reported for tax by the
13 former;

14 (4) The amount of cash discount actually taken by the purchaser or
15 customer;

16 (5) The amount of credit losses actually sustained by taxpayers
17 whose regular books of accounts are kept upon an accrual basis;

18 (6) Amounts derived from business which the state is prohibited
19 from taxing under the Constitution of this state or the Constitution or
20 laws of the United States;

21 (7) Amounts derived from the distribution of water through an
22 irrigation system, for irrigation purposes;

23 (8) Amounts derived from the transportation of commodities from
24 points of origin in this state to final destination outside this state,
25 or from points of origin outside this state to final destination in
26 this state, with respect to which the carrier grants to the shipper the
27 privilege of stopping the shipment in transit at some point in this
28 state for the purpose of storing, manufacturing, milling, or other
29 processing, and thereafter forwards the same commodity, or its
30 equivalent, in the same or converted form, under a through freight rate
31 from point of origin to final destination; and amounts derived from the
32 transportation of commodities from points of origin in the state to an
33 export elevator, wharf, dock or ship side on tidewater or navigable
34 tributaries thereto from which such commodities are forwarded, without
35 intervening transportation, by vessel, in their original form, to
36 interstate or foreign destinations: PROVIDED, That no deduction will
37 be allowed when the point of origin and the point of delivery to such
38 an export elevator, wharf, dock, or ship side are located within the
39 corporate limits of the same city or town;

1 (9) (~~Amounts derived from the production, sale, or transfer of~~
2 ~~electrical energy for resale within or outside the state or for~~
3 ~~consumption outside the state,~~
4 ~~(10)~~) Amounts derived from the distribution of water by a
5 nonprofit water association and used for capital improvements by that
6 nonprofit water association;
7 (~~(11)~~) (10) Amounts paid by a sewerage collection business
8 taxable under RCW 82.16.020(1)(a) to a person taxable under chapter
9 82.04 RCW for the treatment or disposal of sewage.

10 **Sec. 23.** RCW 82.16.090 and 1988 c 228 s 1 are each amended to read
11 as follows:

12 Any customer billing issued by a (~~light or power business or~~) gas
13 distribution business that serves a total of more than twenty thousand
14 customers and operates within the state shall include the following
15 information:

16 (1) The rates and amounts of taxes paid directly by the customer
17 upon products or services rendered by the (~~light and power business~~
18 ~~or~~) gas distribution business; and

19 (2) The rate, origin and approximate amount of each tax levied upon
20 the revenue of the (~~light and power business or~~) gas distribution
21 business and added as a component of the amount charged to the
22 customer. Taxes based upon revenue of the (~~light and power business~~
23 ~~or~~) gas distribution business to be listed on the customer billing
24 need not include taxes levied by the federal government or taxes levied
25 under chapter(~~s 54.287~~) 80.24(~~(7)~~) or 82.04 RCW.

26 **NEW SECTION. Sec. 24.** A new section is added to chapter 82.04 RCW
27 to read as follows:

28 This chapter shall not apply to any person with respect to the
29 business of operating a plant or system for the generation, production,
30 or distribution of electrical energy for hire or sale and/or for the
31 wheeling of electricity for others.

32 **NEW SECTION. Sec. 25.** A new section is added to chapter 84.36 RCW
33 to read as follows:

34 Property owned or used by a person for the business of operating a
35 plant or system for the generation, production, or distribution of

1 electrical energy for hire or sale and/or for the wheeling of
2 electricity for others, is exempt from taxation.

3 NEW SECTION. **Sec. 26.** A new section is added to chapter 84.55 RCW
4 to read as follows:

5 The levy for a taxing district in any year shall be reduced as
6 necessary to prevent exemptions under section 25 of this act from
7 resulting in a higher tax rate than would have occurred without the
8 exemptions.

9 **Sec. 27.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to read
10 as follows:

11 (1) No city or town may impose a franchise fee or any other fee or
12 charge of whatever nature or description upon the (~~light and power,~~
13 ~~or~~) gas distribution (~~(businesses)~~) business, as defined in RCW
14 82.16.010, or telephone business, as defined in RCW 82.04.065, or
15 service provider for use of the right of way, except:

16 (a) A tax authorized by RCW 35.21.865 may be imposed;

17 (b) A fee may be charged to such businesses or service providers
18 that recovers actual administrative expenses incurred by a city or town
19 that are directly related to receiving and approving a permit, license,
20 and franchise, to inspecting plans and construction, or to the
21 preparation of a detailed statement pursuant to chapter 43.21C RCW;

22 (c) Taxes permitted by state law on service providers;

23 (d) Franchise requirements and fees for cable television services
24 as allowed by federal law; and

25 (e) A site-specific charge pursuant to an agreement between the
26 city or town and a service provider of personal wireless services
27 acceptable to the parties for:

28 (i) The placement of new structures in the right of way regardless
29 of height, unless the new structure is the result of a mandated
30 relocation in which case no charge will be imposed if the previous
31 location was not charged;

32 (ii) The placement of replacement structures when the replacement
33 is necessary for the installation or attachment of wireless facilities,
34 and the overall height of the replacement structure and the wireless
35 facility is more than sixty feet; or

36 (iii) The placement of personal wireless facilities on structures
37 owned by the city or town located in the right of way. However, a

1 site-specific charge shall not apply to the placement of personal
2 wireless facilities on existing structures, unless the structure is
3 owned by the city or town.

4 A city or town is not required to approve the use permit for the
5 placement of a facility for personal wireless services that meets one
6 of the criteria in this subsection absent such an agreement. If the
7 parties are unable to agree on the amount of the charge, the service
8 provider may submit the amount of the charge to binding arbitration by
9 serving notice on the city or town. Within thirty days of receipt of
10 the initial notice, each party shall furnish a list of acceptable
11 arbitrators. The parties shall select an arbitrator; failing to agree
12 on an arbitrator, each party shall select one arbitrator and the two
13 arbitrators shall select a third arbitrator for an arbitration panel.
14 The arbitrator or arbitrators shall determine the charge based on
15 comparable siting agreements involving public land and rights of way.
16 The arbitrator or arbitrators shall not decide any other disputed
17 issues, including but not limited to size, location, and zoning
18 requirements. Costs of the arbitration, including compensation for the
19 arbitrator's services, must be borne equally by the parties
20 participating in the arbitration and each party shall bear its own
21 costs and expenses, including legal fees and witness expenses, in
22 connection with the arbitration proceeding.

23 (2) No city or town may impose a franchise fee or any other fee or
24 charge of whatever nature or description upon the business of operating
25 a plant or system for the generation, production, or distribution of
26 electrical energy for hire or sale and/or for the wheeling of
27 electricity for others or upon a person for amounts received for the
28 sale of electrical energy for resale within or outside the state.

29 (3) Subsection (1) of this section does not prohibit franchise fees
30 imposed on an electrical energy, natural gas, or telephone business, by
31 contract existing on April 20, 1982, with a city or town, for the
32 duration of the contract, but the franchise fees shall be considered
33 taxes for the purposes of the limitations established in RCW 35.21.865
34 and 35.21.870 to the extent the fees exceed the costs allowable under
35 subsection (1) of this section.

36 **Sec. 28.** RCW 35.21.865 and 1983 c 99 s 4 are each amended to read
37 as follows:

1 No city or town may change the rate of tax it imposes on the
2 privilege of conducting (~~(an electrical energy)~~) a natural gas(~~(7)~~) or
3 telephone business which change applies to business activities
4 occurring before the effective date of the change, and no rate change
5 may take effect before the expiration of sixty days following the
6 enactment of the ordinance establishing the change except as provided
7 in RCW 35.21.870.

8 **Sec. 29.** RCW 35.21.870 and 1984 c 225 s 6 are each amended to read
9 as follows:

10 (1) No city or town may impose a tax on the privilege of conducting
11 (~~(an electrical energy)~~) a natural gas, steam energy, or telephone
12 business at a rate which exceeds six percent unless the rate is first
13 approved by a majority of the voters of the city or town voting on such
14 a proposition.

15 (2) If a city or town is imposing a rate of tax under subsection
16 (1) of this section in excess of six percent on April 20, 1982, the
17 city or town shall decrease the rate to a rate of six percent or less
18 by reducing the rate each year on or before November 1st by ordinances
19 to be effective on January 1st of the succeeding year, by an amount
20 equal to one-tenth the difference between the tax rate on April 20,
21 1982, and six percent.

22 Nothing in this subsection prohibits a city or town from reducing
23 its rates by amounts greater than the amounts required in this
24 subsection.

25 Voter approved rate increases under subsection (1) of this section
26 shall not be included in the computations under this subsection.

27 **Sec. 30.** RCW 52.18.020 and 1990 c 294 s 2 are each amended to read
28 as follows:

29 The term "personal property" for the purposes of this chapter shall
30 include every form of tangible personal property, including but not
31 limited to, all goods, chattels, stock in trade, estates, or crops:
32 PROVIDED, That all personal property not assessed and subjected to ad
33 valorem taxation under Title 84 RCW, all property under contract or for
34 which the district is receiving payment for as authorized by RCW
35 52.30.020 (~~(and all property subject to the provisions of chapter 54.28~~
36 ~~RCW)~~), or all property that is subject to a contract for services with
37 a fire protection district, shall be exempt from the benefit charge

1 imposed under this chapter: PROVIDED FURTHER, That the term "personal
2 property" shall not include any personal property used for farming,
3 field crops, farm equipment or livestock: AND PROVIDED FURTHER, That
4 the term "improvements to real property" shall not include permanent
5 growing crops, field improvements installed for the purpose of aiding
6 the growth of permanent crops, or other field improvements normally not
7 subject to damage by fire.

8 **Sec. 31.** RCW 82.02.030 and 1993 sp.s. c 25 s 107 are each amended
9 to read as follows:

10 The rate of the additional taxes under RCW (~~54.28.020(2),~~
11 ~~54.28.025(2),~~) 66.24.210(2), 82.16.020(2), 82.27.020(5), and
12 82.29A.030(2) shall be seven percent.

13 **NEW SECTION. Sec. 32.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 82.16.0491 (Credit--Contributions to an electric utility
16 rural economic development revolving fund) and 1999 c 311 s 402;

17 (2) RCW 82.16.053 (Deductions in computing tax--Light and power
18 businesses) and 1996 c 145 s 1 & 1994 c 236 s 1;

19 (3) RCW 54.28.010 (Definitions) and 1977 ex.s. c 366 s 1, 1967
20 ex.s. c 26 s 22, 1959 c 274 s 1, & 1957 c 278 s 7;

21 (4) RCW 54.28.011 ("Gross revenue" defined) and 1957 c 278 s 12;

22 (5) RCW 54.28.020 (Tax imposed--Rates--Additional tax imposed) and
23 1983 2nd ex.s. c 3 s 8, 1982 1st ex.s. c 35 s 18, 1977 ex.s. c 366 s 2,
24 1959 c 274 s 2, & 1957 c 278 s 2;

25 (6) RCW 54.28.025 (Tax imposed with respect to thermal electric
26 generating facilities--Rate--Additional tax imposed) and 1983 2nd ex.s.
27 c 3 s 9, 1982 1st ex.s. c 35 s 19, & 1977 ex.s. c 366 s 6;

28 (7) RCW 54.28.030 (Districts' report to department of revenue) and
29 1977 ex.s. c 366 s 3, 1975 1st ex.s. c 278 s 30, 1959 c 274 s 3, & 1957
30 c 278 s 3;

31 (8) RCW 54.28.040 (Tax computed--Payment--Penalties--Disposition)
32 and 1996 c 149 s 16, 1982 1st ex.s. c 35 s 20, 1975 1st ex.s. c 278 s
33 31, & 1957 c 278 s 4;

34 (9) RCW 54.28.050 (Distribution of tax) and 1982 1st ex.s. c 35 s
35 21, 1980 c 154 s 8, 1977 ex.s. c 366 s 4, 1975 1st ex.s. c 278 s 32,
36 1959 c 274 s 4, & 1957 c 278 s 5;

1 (10) RCW 54.28.055 (Distribution of tax proceeds from thermal
2 electric generating facilities) and 1986 c 189 s 1, 1982 1st ex.s. c 35
3 s 22, 1979 c 151 s 165, & 1977 ex.s. c 366 s 7;
4 (11) RCW 54.28.060 (Interest) and 1996 c 149 s 12 & 1957 c 278 s 6;
5 (12) RCW 54.28.070 (Municipal taxes--May be passed on) and 1941 c
6 245 s 3;
7 (13) RCW 54.28.080 (Additional tax for payment on bonded
8 indebtedness of school districts) and 1957 c 278 s 8;
9 (14) RCW 54.28.090 (Deposit of funds to credit of certain taxing
10 districts) and 1980 c 154 s 9, 1977 ex.s. c 366 s 5, & 1957 c 278 s 10;
11 (15) RCW 54.28.100 (Use of moneys received by taxing district) and
12 1957 c 278 s 11;
13 (16) RCW 54.28.110 (Voluntary payments by district to taxing entity
14 for removal of property from tax rolls) and 1957 c 278 s 13;
15 (17) RCW 54.28.120 (Amount of tax if district acquires electric
16 utility property from public service company) and 1957 c 278 s 14;
17 (18) RCW 43.21F.055 (Intervention in certain regulatory proceedings
18 prohibited--Application to energy facility site evaluation council--
19 Avoidance of duplication of activity) and 1996 c 186 s 104 & 1981 c 295
20 s 5;
21 (19) RCW 43.21F.090 (State energy strategy--Review and report to
22 legislature) and 1996 c 186 s 106 & 1994 c 207 s 5;
23 (20) RCW 80.50.010 (Legislative finding--Policy--Intent) and 1996
24 c 4 s 1, 1975-'76 2nd ex.s. c 108 s 29, & 1970 ex.s. c 45 s 1;
25 (21) RCW 80.50.020 (Definitions) and 1995 c 69 s 1, 1977 ex.s. c
26 371 s 2, 1975-'76 2nd ex.s. c 108 s 30, & 1970 ex.s. c 45 s 2;
27 (22) RCW 80.50.030 (Energy facility site evaluation council--
28 Created--Membership--Support) and 1996 c 186 s 108;
29 (23) RCW 80.50.040 (Energy facility site evaluation council--Powers
30 enumerated) and 1990 c 12 s 4, 1985 c 67 s 2, 1979 ex.s. c 254 s 1,
31 1977 ex.s. c 371 s 4, 1975-'76 2nd ex.s. c 108 s 32, & 1970 ex.s. c 45
32 s 4;
33 (24) RCW 80.50.060 (Energy facilities to which chapter applies--
34 Applications for certification--Forms--Information) and 1977 ex.s. c
35 371 s 5, 1975-'76 2nd ex.s. c 108 s 34, & 1970 ex.s. c 45 s 6;
36 (25) RCW 80.50.071 (Council to receive applications--Fees or
37 charges for application processing or certification monitoring) and
38 1977 ex.s. c 371 s 16;

1 (26) RCW 80.50.075 (Expedited processing of applications) and 1989
2 c 175 s 172 & 1977 ex.s. c 371 s 17;
3 (27) RCW 80.50.080 (Counsel for the environment) and 1977 ex.s. c
4 371 s 6 & 1970 ex.s. c 45 s 8;
5 (28) RCW 80.50.090 (Public hearings) and 1989 c 175 s 173 & 1970
6 ex.s. c 45 s 9;
7 (29) RCW 80.50.100 (Recommendations to governor--Approval or
8 rejection of certification--Reconsideration) and 1989 c 175 s 174, 1977
9 ex.s. c 371 s 8, 1975-'76 2nd ex.s. c 108 s 36, & 1970 ex.s. c 45 s 10;
10 (30) RCW 80.50.105 (Transmission facilities for petroleum
11 products--Recommendations to governor) and 1991 c 200 s 1112;
12 (31) RCW 80.50.110 (Chapter governs and supersedes other law or
13 regulations--Preemption of regulation and certification by state) and
14 1975-'76 2nd ex.s. c 108 s 37 & 1970 ex.s. c 45 s 11;
15 (32) RCW 80.50.120 (Effect of certification) and 1977 ex.s. c 371
16 s 10, 1975-'76 2nd ex.s. c 108 s 38, & 1970 ex.s. c 45 s 12;
17 (33) RCW 80.50.130 (Revocation or suspension of certification--
18 Grounds) and 1970 ex.s. c 45 s 13;
19 (34) RCW 80.50.140 (Review) and 1988 c 202 s 62, 1981 c 64 s 3,
20 1977 ex.s. c 371 s 11, & 1970 ex.s. c 45 s 14;
21 (35) RCW 80.50.150 (Enforcement of compliance--Penalties) and 1979
22 ex.s. c 254 s 2, 1979 c 41 s 1, 1977 ex.s. c 371 s 12, & 1970 ex.s. c
23 45 s 15;
24 (36) RCW 80.50.160 (Availability of information) and 1970 ex.s. c
25 45 s 16;
26 (37) RCW 80.50.175 (Study of potential sites--Fee--Disposition of
27 payments) and 1983 c 3 s 205, 1977 ex.s. c 371 s 13, 1975-'76 2nd ex.s.
28 c 108 s 40, & 1974 ex.s. c 110 s 2;
29 (38) RCW 80.50.180 (Proposals and actions by other state agencies
30 and local political subdivisions pertaining to energy facilities exempt
31 from "detailed statement" required by RCW 43.21C.030) and 1977 ex.s. c
32 371 s 14;
33 (39) RCW 80.50.190 (Disposition of receipts from applicants) and
34 1977 ex.s. c 371 s 15;
35 (40) RCW 80.50.300 (Unfinished nuclear power projects--Transfer of
36 all or a portion of a site to a political subdivision or subdivisions
37 of the state--Water rights) and 2000 c 243 s 1 & 1996 c 4 s 2;
38 (41) RCW 80.50.310 (Council actions--Exemption from chapter 43.21C
39 RCW) and 1996 c 4 s 3;

1 (42) RCW 80.50.900 (Severability--1970 ex.s. c 45) and 1970 ex.s.
2 c 45 s 17;

3 (43) RCW 80.50.901 (Severability--1974 ex.s. c 110) and 1974 ex.s.
4 c 110 s 3;

5 (44) RCW 80.50.902 (Severability--1977 ex.s. c 371) and 1977 ex.s.
6 c 371 s 20;

7 (45) RCW 80.50.903 (Severability--1996 c 4) and 1996 c 4 s 5; and

8 (46) RCW 80.50.904 (Effective date--1996 c 4) and 1996 c 4 s 6.

9 NEW SECTION. **Sec. 33.** Sections 14 through 19 of this act
10 constitute a new chapter in Title 82 RCW.

11 NEW SECTION. **Sec. 34.** Section 25 of this act applies to taxes
12 levied for collection in 2002 and thereafter.

13 NEW SECTION. **Sec. 35.** Part headings used in this act are not any
14 part of the law.

15 NEW SECTION. **Sec. 36.** Except for section 13 of this act, this act
16 takes effect January 1, 2002.

17 NEW SECTION. **Sec. 37.** Section 12 of this act expires March 1,
18 2002.

19 NEW SECTION. **Sec. 38.** Section 13 of this act takes effect March
20 1, 2002.

--- END ---

APPENDIX 5

SUBSTITUTE HOUSE BILL 1207

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Technology, Telecommunications & Energy
(originally sponsored by Representatives Morris, Poulsen, Carrell,
Reardon, Conway, Edwards and Linville)

Read first time . Referred to Committee on .

1 AN ACT Relating to energy; amending RCW 82.16.020, 82.16.050,
2 82.16.053, 82.16.055, and 35.21.870; adding a new section to chapter
3 82.16 RCW; repealing RCW 82.12.022 and 82.14.230; providing an
4 effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read
7 as follows:

8 (1) There is levied and there shall be collected from every person
9 a tax for the act or privilege of engaging within this state in any one
10 or more of the businesses herein mentioned.

11 (a) For the following businesses, the tax shall be equal to the
12 gross income of the business, multiplied by the rate set out after the
13 business, as follows:

14 ~~((a))~~ (i) Express, sewerage collection, and telegraph businesses:
15 Three and six-tenths percent;

16 ~~((b) Light and power business: Three and sixty-two one-hundredths~~
17 percent;

18 ~~(c) Gas distribution business: Three and six-tenths percent;~~

1 ~~(d))~~ (ii) Urban transportation business: Six-tenths of one
2 percent;

3 ~~((e))~~ (iii) Vessels under sixty-five feet in length, except
4 tugboats, operating upon the waters within the state: Six-tenths of
5 one percent;

6 ~~((f))~~ (iv) Motor transportation, railroad, railroad car, and
7 tugboat businesses, and all public service businesses other than ones
8 mentioned above: One and eight-tenths of one percent;

9 ~~((g))~~ (v) Water distribution business: Four and seven-tenths
10 percent.

11 (b) (i) For a light and power business, the tax is equal to the rate
12 of . . . cents per kilowatt hour multiplied by the number of kilowatt
13 hours of electricity that are generated, produced, transported, or
14 distributed for hire or sale and/or wheeled for others.

15 (ii) For a gas distribution business, the tax is equal to the rate
16 of . . . cents multiplied by the number of thousand cubic feet of
17 natural or manufactured gas that are produced, transported, or
18 distributed for hire or sale.

19 (2) An additional tax is imposed equal to the rate specified in RCW
20 82.02.030 multiplied by the tax payable under subsection (1) of this
21 section.

22 (3) Twenty percent of the moneys collected under subsection (1) of
23 this section on water distribution businesses and sixty percent of the
24 moneys collected under subsection (1) of this section on sewerage
25 collection businesses shall be deposited in the public works assistance
26 account created in RCW 43.155.050.

27 **Sec. 2.** RCW 82.16.050 and 2000 c 245 s 1 are each amended to read
28 as follows:

29 Except for a light and power business or a gas distribution
30 business, in computing tax there may be deducted from the gross income
31 the following items:

32 (1) Amounts derived by municipally owned or operated public service
33 businesses, directly from taxes levied for the support or maintenance
34 thereof: PROVIDED, That this section shall not be construed to exempt
35 service charges which are spread on the property tax rolls and
36 collected as taxes;

37 (2) Amounts derived from the sale of commodities to persons in the
38 same public service business as the seller, for resale as such within

1 this state. This deduction is allowed only with respect to water
2 distribution(~~(, gas distribution)~~) or other public service businesses
3 which furnish water, gas or any other commodity in the performance of
4 public service businesses;

5 (3) Amounts actually paid by a taxpayer to another person taxable
6 under this chapter as the latter's portion of the consideration due for
7 services furnished jointly by both, if the total amount has been
8 credited to and appears in the gross income reported for tax by the
9 former;

10 (4) The amount of cash discount actually taken by the purchaser or
11 customer;

12 (5) The amount of credit losses actually sustained by taxpayers
13 whose regular books of accounts are kept upon an accrual basis;

14 (6) Amounts derived from business which the state is prohibited
15 from taxing under the Constitution of this state or the Constitution or
16 laws of the United States;

17 (7) Amounts derived from the distribution of water through an
18 irrigation system, for irrigation purposes;

19 (8) Amounts derived from the transportation of commodities from
20 points of origin in this state to final destination outside this state,
21 or from points of origin outside this state to final destination in
22 this state, with respect to which the carrier grants to the shipper the
23 privilege of stopping the shipment in transit at some point in this
24 state for the purpose of storing, manufacturing, milling, or other
25 processing, and thereafter forwards the same commodity, or its
26 equivalent, in the same or converted form, under a through freight rate
27 from point of origin to final destination; and amounts derived from the
28 transportation of commodities from points of origin in the state to an
29 export elevator, wharf, dock or ship side on tidewater or navigable
30 tributaries thereto from which such commodities are forwarded, without
31 intervening transportation, by vessel, in their original form, to
32 interstate or foreign destinations: PROVIDED, That no deduction will
33 be allowed when the point of origin and the point of delivery to such
34 an export elevator, wharf, dock, or ship side are located within the
35 corporate limits of the same city or town;

36 ~~(9) ((Amounts derived from the production, sale, or transfer of
37 electrical energy for resale within or outside the state or for
38 consumption outside the state,~~

1 ~~(10)~~) Amounts derived from the distribution of water by a
2 nonprofit water association and used for capital improvements by that
3 nonprofit water association;

4 ~~((11))~~ (10) Amounts paid by a sewerage collection business
5 taxable under RCW 82.16.020(1)(a)(i) to a person taxable under chapter
6 82.04 RCW for the treatment or disposal of sewage.

7 **NEW SECTION. Sec. 3.** A new section is added to chapter 82.16 RCW
8 to read as follows:

9 The taxes imposed in RCW 82.16.020(1)(b) do not apply to
10 electricity, natural gas, or manufactured gas delivered to a person who
11 acquires the electricity, natural gas, or manufactured gas for the
12 purpose of resale in the regular course of business.

13 **Sec. 4.** RCW 82.16.053 and 1996 c 145 s 1 are each amended to read
14 as follows:

15 (1) ~~((In computing tax under this chapter,))~~ A light and power
16 business ((may deduct from gross income)) is allowed a credit against
17 taxes due under this chapter in an amount equal to the lesser of the
18 amounts determined under subsections (2) through (4) of this section.

19 (2)(a) An amount equal to fifty percent of ((wholesale power cost
20 paid)) the amount of kilowatt hours of wholesale electricity purchased
21 during the reporting period, multiplied by the rate in RCW
22 82.16.020(1)(b)(i), if the light and power business has fewer than five
23 and one-half customers per mile of line.

24 (b) An amount equal to forty percent of ((wholesale power cost
25 paid)) the amount of kilowatt hours of wholesale electricity purchased
26 during the reporting period, multiplied by the rate in RCW
27 82.16.020(1)(b)(i), if the light and power business has more than five
28 and one-half but less than eleven customers per mile.

29 (c) An amount equal to thirty percent of the ((wholesale power cost
30 paid)) amount of kilowatt hours of wholesale electricity purchased
31 during the reporting period, multiplied by the rate in RCW
32 82.16.020(1)(b)(i), if the light and power business has more than
33 eleven but less than seventeen customers per mile of line.

34 (d) Zero if the light and power business has more than seventeen
35 customers per mile of line.

36 (3) ~~((Wholesale power cost))~~ An amount equal to the amount of
37 kilowatt hours of wholesale electricity purchased, multiplied by the

1 rate in RCW 82.16.020(1)(b)(i), and multiplied by the percentage by
2 which the average retail electric power rates for the light and power
3 business exceed the state average electric power rate. If more than
4 fifty percent of the kilowatt hours sold by a light and power business
5 are sold to irrigators, then only sales to nonirrigators shall be used
6 to calculate the average electric power rate for that light and power
7 business. For purposes of this subsection, the department shall
8 determine state average electric power rate each year based on the most
9 recent available data and shall inform taxpayers of its determination.

10 (4) (~~Four hundred thousand~~) Fifteen thousand five hundred
11 dollars per month.

12 **Sec. 5.** RCW 82.16.055 and 1980 c 149 s 3 are each amended to read
13 as follows:

14 (1) (~~In computing tax under this chapter there shall be deducted~~
15 ~~from the gross income~~) A business is allowed a credit against taxes
16 due under this chapter in an amount equal to:

17 (a) (~~An amount equal to the cost of production at the plant for~~
18 ~~consumption within the state of Washington of:~~

19 ~~(i))~~ The amount of kilowatt hours of electrical energy produced or
20 generated from cogeneration as defined in RCW 82.35.020, multiplied by
21 the rate in RCW 82.16.020(1)(b)(i); and

22 ~~((ii))~~ (b) The amount of kilowatt hours of electrical energy or
23 the amount of thousand cubic feet of gas produced or generated from
24 renewable energy resources ((such as)), multiplied by the applicable
25 rate in RCW 82.16.020(1)(b). Renewable energy resources include, but
26 are not limited to, solar energy, wind energy, hydroelectric energy,
27 geothermal energy, wood, wood wastes, municipal wastes, agricultural
28 products and wastes, and end-use waste heat; and

29 ~~((b))~~ (c) Those amounts expended to improve consumers' efficiency
30 of energy end use or to otherwise reduce the use of electrical energy
31 or gas by the consumer, multiplied by 0.03873 percent.

32 (2) This section applies only to new facilities for the production
33 or generation of energy from cogeneration or renewable energy resources
34 or measures to improve the efficiency of energy end use on which
35 construction or installation is begun after June 12, 1980, and before
36 January 1, 1990.

1 (3) (~~Deductions~~) Credits under subsection (1) (a) of this section
2 shall be allowed for a period not to exceed thirty years after the
3 project is placed in operation.

4 (4) Measures or projects encouraged under this section shall at the
5 time they are placed in service be reasonably expected to save,
6 produce, or generate energy at a total incremental system cost per unit
7 of energy delivered to end use which is less than or equal to the
8 incremental system cost per unit of energy delivered to end use from
9 similarly available conventional energy resources which utilize nuclear
10 energy or fossil fuels and which the gas or electric utility could
11 acquire to meet energy demand in the same time period.

12 (5) The department of revenue, after consultation with the
13 utilities and transportation commission in the case of investor-owned
14 utilities and the governing bodies of locally regulated utilities,
15 shall determine the eligibility of individual projects and measures for
16 (~~deductions~~) credits under this section.

17 **Sec. 6.** RCW 35.21.870 and 1984 c 225 s 6 are each amended to read
18 as follows:

19 (1) (a) Except as provided in (b) of this subsection, no city or
20 town may impose a tax on the privilege of conducting an electrical
21 energy, natural gas, steam energy, or telephone business at a rate
22 which exceeds six percent of gross receipts unless the rate is first
23 approved by a majority of the voters of the city or town voting on such
24 a proposition.

25 (b) (i) For the privilege of conducting an electrical energy
26 business, a city or town may impose a volumetric tax in lieu of a gross
27 receipts tax under (a) of this subsection. A city or town that chooses
28 to impose a tax under this subsection may not impose the tax at a rate
29 which exceeds . . . cents per kilowatt hour unless the rate is first
30 approved by a majority of the voters of the city or town voting on the
31 proposition.

32 (ii) For the privilege of conducting a natural gas business, a city
33 or town may impose a volumetric tax in lieu of a gross receipts tax
34 under (a) of this subsection. A city or town that chooses to impose a
35 tax under this subsection may not impose the tax at a rate which
36 exceeds . . . cents per thousand cubic feet unless the rate is first
37 approved by a majority of the voters of the city or town voting on the
38 proposition.

1 (2) If a city or town is imposing a rate of tax under subsection
2 (1)(a) of this section in excess of six percent on April 20, 1982, the
3 city or town shall decrease the rate to a rate of six percent or less
4 by reducing the rate each year on or before November 1st by ordinances
5 to be effective on January 1st of the succeeding year, by an amount
6 equal to one-tenth the difference between the tax rate on April 20,
7 1982, and six percent.

8 Nothing in this subsection prohibits a city or town from reducing
9 its rates by amounts greater than the amounts required in this
10 subsection.

11 Voter approved rate increases under subsection (1) of this section
12 shall not be included in the computations under this subsection.

13 NEW SECTION. Sec. 7. The following acts or parts of acts are each
14 repealed:

15 (1) RCW 82.12.022 (Natural or manufactured gas--Use tax imposed--
16 Exemption) and 1994 c 124 s 9 & 1989 c 384 s 3; and

17 (2) RCW 82.14.230 (Natural or manufactured gas--Cities may impose
18 use tax) and 1989 c 384 s 2.

19 NEW SECTION. Sec. 8. This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 July 1, 2001.

--- END ---

APPENDIX 6

HOUSE BILL 1316

State of Washington 58th Legislature 2003 Regular Session

By Representatives Morris and Anderson

Read first time 01/22/2003. Referred to Committee on Technology,
Telecommunications & Energy.

1 AN ACT Relating to utility taxation; amending RCW 82.16.010,
2 82.16.020, 82.16.050, 82.16.090, 54.28.010, 54.28.011, 54.28.020,
3 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 54.28.060,
4 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and 54.28.120;
5 adding new chapters to Title 82 RCW; creating new sections; recodifying
6 RCW 54.28.010, 54.28.011, 54.28.020, 54.28.025, 54.28.030, 54.28.040,
7 54.28.050, 54.28.055, 54.28.060, 54.28.070, 54.28.080, 54.28.090,
8 54.28.100, 54.28.110, and 54.28.120; providing effective dates; and
9 declaring an emergency.

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

11 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

14 (1) "Amount of electricity sold at retail" means the amount of
15 kilowatt hours of electricity reported as retail sales to ultimate
16 consumers to the federal energy information administration on form EIA-
17 861 or its successor.

18 (2) "Amount of electricity sold at wholesale" means the amount of

1 kilowatt hours of electricity reported as sales of electricity for
2 resale to:

3 (a) The federal energy information administration on form EIA-412
4 or its successor;

5 (b) The federal energy regulatory commission on form 1 or its
6 successor; or

7 (c) To the department on an affidavit in a form and manner as
8 prescribed by the department, if the taxpayer is not required to report
9 sales of electricity for resale under (a) or (b) of this subsection.

10 (3) "Customer" or "purchaser" means a person who acquires for
11 consideration electricity for use or consumption and not for resale.

12 (4) "Department" means the department of revenue.

13 (5) "Distribution services provider" means a person controlling or
14 operating distribution facilities for distribution of electricity to
15 the public. A distribution services provider includes a purchaser who
16 takes electricity directly from a transmission line and a purchaser who
17 generates electricity for the purchaser's own use but does not include
18 electricity generated by the purchaser for noncommercial use or for
19 agricultural use.

20 (6) "Net amount of electricity generated" means the amount of
21 kilowatt hours of electricity reported as net generation to the federal
22 energy information administration on form EIA-906 or its successor.

23 (7) "Person" is defined as provided in RCW 82.04.030.

24 NEW SECTION. **Sec. 2.** WHOLESALE ENERGY TRANSACTION TAX--RATE OF
25 TAX--EXEMPTIONS--COST RECOVERY. (1)(a) Except as provided in
26 subsection (2) of this section, a wholesale energy transaction tax is
27 imposed upon electricity transmitted within the state as provided in
28 this section. The tax is imposed at a rate of two-tenths of one cent
29 per kilowatt hour of electricity.

30 (b)(i) For electricity produced in the state for delivery outside
31 of the state, the taxpayer is the person that introduces the
32 electricity onto transmission lines. The amount of electricity subject
33 to tax under this subsection shall be determined by an apportionment
34 formula under (b)(ii) of this subsection. The taxpayer shall remit the
35 tax annually to the department under the provisions of chapter 82.32
36 RCW.

1 (ii) The amount of electricity subject to tax under this subsection
2 (1)(b)(ii) is, for the previous calendar year, the greater of the
3 following:

4 (A) Ninety-five percent of the net amount of electricity generated
5 by the taxpayer within the state, less the sum of the amount of
6 electricity sold at retail within the state and the amount of
7 electricity sold at wholesale to distribution services providers
8 located within the state; or

9 (B) Zero.

10 (c) For electricity produced for delivery within the state, the
11 taxpayer is the distribution services provider. The tax base is the
12 amount of kilowatt hours of electricity delivered to the distribution
13 services provider.

14 (2)(a) Electricity transmitted through the state that is not
15 produced or delivered in the state is exempt from the tax imposed by
16 this section.

17 (b) An agency of the United States government that produces
18 electricity within the state is exempt from the provisions in
19 subsection (1)(b) of this section.

20 (c) Electricity delivered to a purchaser that receives its power
21 directly from a transmission or distribution facility owned by an
22 entity of the United States government is exempt from the tax imposed
23 by this section.

24 (3) A distribution services provider is allowed to recover the tax
25 imposed by this section and the administrative costs to comply with
26 this chapter in its rates.

27 NEW SECTION. **Sec. 3.** MULTISTATE EXEMPTION. A person, upon proof
28 that the person has paid a tax in another state on the transmission of
29 electricity, is allowed a credit against the tax imposed by this
30 chapter if the tax has been paid in another state.

31 NEW SECTION. **Sec. 4.** ADMINISTRATION. Chapter 82.32 RCW applies
32 to the taxes imposed in this chapter. The tax due dates, reporting
33 periods, and return requirements applicable to chapter 82.04 RCW apply
34 to the taxes imposed in this chapter.

1 NEW SECTION. **Sec. 5.** (1) The following definitions apply to this
2 section:

3 (a) "Qualifying project" means a project designed to achieve job
4 creation or business retention, to add or upgrade nonelectrical
5 infrastructure, to add or upgrade health and safety facilities, to
6 accomplish energy and water use efficiency improvements, including
7 renewable energy development, or to add or upgrade emergency services
8 in any designated qualifying rural area.

9 (b) "Qualifying rural area" means:

10 (i) A rural county, which is a county with a population density of
11 less than one hundred persons per square mile as determined by the
12 office of financial management and published each year by the
13 department for the period July 1st to June 30th; or

14 (ii) Any geographic area in the state that receives electricity
15 from a taxpayer with twelve thousand or fewer customers and with fewer
16 than twenty-six meters per mile of distribution line as determined and
17 published by the department effective July 1st of each year. The
18 department shall use current data provided by the electricity industry.

19 (c) "Electric utility rural economic development revolving fund"
20 means a fund devoted exclusively to funding qualifying projects in
21 qualifying rural areas.

22 (d) "Local board" is a board of directors with at least, but not
23 limited to, three members representing local businesses and community
24 groups who have been appointed by the sponsoring electric utility to
25 oversee and direct the activities of the electric utility rural
26 economic development revolving fund.

27 (2) A taxpayer with fewer than twenty-six active meters per mile of
28 distribution line in any geographic area in the state shall be allowed
29 a credit against taxes due under this chapter in an amount equal to
30 fifty percent of contributions made in any calendar year directly to an
31 electric utility rural economic development revolving fund. The credit
32 shall be taken in a form and manner as required by the department. The
33 credit under this section shall not exceed twenty-five thousand dollars
34 per calendar year per taxpayer. The credit may not exceed the tax that
35 would otherwise be due under this chapter. Refunds shall not be
36 granted in the place of credits. Expenditures not used to earn a
37 credit in one calendar year may not be used to earn a credit in
38 subsequent years.

1 (3) The right to earn tax credits under this section expires
2 December 31, 2005.

3 (4) To qualify for the credit in subsection (2) of this section,
4 the taxpayer shall establish an electric utility rural economic
5 development revolving fund which is governed by a local board whose
6 members shall reside in the qualifying rural area served by the
7 taxpayer. The local board shall have authority to determine all
8 criteria and conditions for the expenditure of funds from the electric
9 utility rural economic development revolving fund, and for the terms
10 and conditions of repayment.

11 (5) Any funds repaid to the electric utility rural economic
12 development revolving fund by recipients shall be made available for
13 additional qualifying projects.

14 (6) If at any time the electric utility rural economic development
15 revolving fund is dissolved, any money claimed as a tax credit under
16 this section shall either be granted to a qualifying project or
17 refunded to the state within two years of termination.

18 (7) The total amount of credits that may be used in any fiscal year
19 shall not exceed three hundred fifty thousand dollars in any fiscal
20 year. The department shall allow the use of earned credits on a first-
21 come, first-served basis. Unused earned credits may be carried over to
22 subsequent years.

23 NEW SECTION. **Sec. 6.** (1) Unless the context clearly requires
24 otherwise, the definitions in this subsection apply throughout this
25 section.

26 (a) "Direct service industrial customer" means a person who is an
27 industrial customer that contracts for the purchase of power from the
28 Bonneville Power Administration for direct consumption as of May 8,
29 2001. "Direct service industrial customer" includes a person who is a
30 subsidiary that is more than fifty percent owned by a direct service
31 industrial customer and who receives power from the Bonneville Power
32 Administration pursuant to the parent's contract for power.

33 (b) "Facility" means a gas turbine electrical generation facility
34 that does not exist on May 8, 2001.

35 (c) "Average annual employment" means the total employment in this
36 state for a calendar year at the direct service industrial customer's
37 location where electricity from the facility will be consumed.

1 (2) Effective July 1, 2001, a credit is allowed against the tax due
2 under this chapter on sales of electricity made from a facility to a
3 direct service industrial customer if the contract for sale of
4 electricity to a direct service industrial customer contains the
5 following terms:

6 (a) Sales of electricity from the facility to the direct service
7 industrial customer will be made for ten consecutive years or more;

8 (b) The price charged for the electricity will be reduced by an
9 amount equal to the tax credit; and

10 (c) Disallowance of all or part of the credit under subsection (5)
11 of this section is a breach of contract and the damages to be paid by
12 the direct service industrial customer to the facility are the amount
13 of tax credit disallowed.

14 (3) The credit is equal to the gross proceeds from the sale of the
15 electricity to a direct service industrial customer multiplied by the
16 rate in effect at the time of the sale for the taxpayer under section
17 2 of this act. The credit may be used each reporting period for sixty
18 months following the first month electricity is sold from a facility to
19 a direct service industrial customer. Credit under this section is
20 limited to the amount of tax imposed under this chapter. Refunds shall
21 not be given in place of credits and credits may not be carried over to
22 subsequent calendar years.

23 (4) Application for credit shall be made before the first sale of
24 electricity from a facility to a direct service industrial customer.
25 The application shall be in a form and manner prescribed by the
26 department and shall include, but is not limited to, information
27 regarding the location of the facility, identification of the direct
28 service industrial customer who will receive electricity from the
29 facility, the projected date of the first sale of electricity to a
30 direct service industrial customer, the date construction is projected
31 to begin or did begin, and the average annual employment in the state
32 of the direct service industrial customer who will receive electricity
33 from the facility for the six calendar years immediately preceding the
34 year in which the application is made. A copy of the contract for sale
35 of electricity must be attached to the application. The department
36 shall rule on the application within thirty days of receipt.

37 (5) All or part of the credit shall be disallowed and must be paid
38 if the average of the direct service industrial customer's average

1 annual employment for the five calendar years subsequent to the
 2 calendar year containing the first month of sale of electricity from a
 3 facility to a direct service industrial customer is less than the six-
 4 year average annual employment stated on the application for credit
 5 under this section. The direct service industrial customer shall
 6 certify to the department and to the facility by June 1st of the sixth
 7 calendar year following the calendar year in which the month of first
 8 sale occurs the average annual employment for each of the five prior
 9 calendar years. All or part of the credit that shall be disallowed and
 10 must be paid is commensurate with the decrease in the five-year average
 11 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

20 (6) (a) Payments on credit that is disallowed shall begin in the
 21 sixth calendar year following the calendar year in which the month
 22 following the first month of sale of electricity from a facility to a
 23 direct service industrial customer occurs. The first payment will be
 24 due on or before December 31st with subsequent annual payments due on
 25 or before December 31st of the following four years according to the
 26 schedule in this subsection.

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

33 (b) The department may authorize an accelerated payment schedule
 34 upon request of the taxpayer.

1 (c) Interest shall not be charged on the credit that is disallowed
2 for the sixty-month period the credit may be taken, although all other
3 penalties and interest applicable to delinquent excise taxes may be
4 assessed and imposed. The debt for credit that is disallowed and must
5 be paid will not be extinguished by insolvency or other failure of the
6 taxpayer. Transfer of ownership of the facility does not affect
7 eligibility for this credit. However, the credit is available to the
8 successor only if the eligibility conditions of this section are met.

9 (7) The employment security department shall make, and certify to
10 the department, all determinations of employment under this section as
11 requested by the department.

12 NEW SECTION. **Sec. 7.** (1) Unless the context clearly requires
13 otherwise, the definitions in this subsection apply throughout this
14 section.

15 (a) "Base credit" means the maximum amount of credit against the
16 tax imposed by this chapter that each taxpayer may take each fiscal
17 year as calculated by the department. The base credit is equal to the
18 proportionate share that the total grants received by each taxpayer in
19 the prior fiscal year bears to the total grants received by all
20 taxpayers and gas distribution businesses under RCW 82.16.0497 in the
21 prior fiscal year multiplied by two million five hundred thousand
22 dollars.

23 (b) "Billing discount" means a reduction in the amount charged for
24 providing service to qualifying persons in Washington made by a
25 taxpayer. Billing discount does not include grants received by the
26 taxpayer.

27 (c) "Grant" means funds provided to a taxpayer by the department of
28 community, trade, and economic development or by a qualifying
29 organization.

30 (d) "Low-income home energy assistance program" means energy
31 assistance programs for low-income households as defined on December
32 31, 2000, in the low-income home energy assistance act of 1981 as
33 amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

34 (e) "Qualifying person" means a Washington resident who applies for
35 assistance and qualifies for a grant regardless of whether that person
36 receives a grant.

1 (f) "Qualifying contribution" means money given by a taxpayer to a
2 qualifying organization, exclusive of money received in the prior
3 fiscal year from its customers for the purpose of assisting other
4 customers.

5 (g) "Qualifying organization" means an entity that has a
6 contractual agreement with the department of community, trade, and
7 economic development to administer in a specified service area low-
8 income home energy assistance funds received from the federal
9 government and other funds that may be received by the entity.

10 (2) Subject to the limitations in this section, a taxpayer may take
11 a credit each fiscal year against the tax imposed under this chapter.

12 (a)(i) A credit may be taken for qualifying contributions if the
13 dollar amount of qualifying contributions for the fiscal year in which
14 the tax credit is taken is greater than one hundred twenty-five percent
15 of the dollar amount of qualifying contributions given in fiscal year
16 2000.

17 (ii) If no qualifying contributions were given in fiscal year 2000,
18 a credit shall be allowed for the first fiscal year that qualifying
19 contributions are given. Thereafter, credit shall be allowed if the
20 qualifying contributions given exceed one hundred twenty-five percent
21 of qualifying contributions given in the first fiscal year.

22 (iii) The amount of credit shall be fifty percent of the dollar
23 amount of qualifying contributions given in the fiscal year in which
24 the tax credit is taken.

25 (b)(i) A credit may be taken for billing discounts if the dollar
26 amount of billing discounts for the fiscal year in which the tax credit
27 is taken is greater than one hundred twenty-five percent of the dollar
28 amount of billing discounts given in fiscal year 2000.

29 (ii) If no billing discounts were given in fiscal year 2000, a
30 credit shall be allowed in the first fiscal year that billing discounts
31 are given. Thereafter, credit shall be allowed if the dollar amount of
32 billing discounts given exceeds one hundred twenty-five percent of
33 billing discounts given in the first fiscal year.

34 (iii) The amount of credit shall be fifty percent of the dollar
35 amount of the billing discounts given in the fiscal year in which the
36 tax credit is taken.

37 (c) The total amount of credit that may be taken for qualifying

1 contributions and billing discounts in a fiscal year is limited to the
2 base credit for the same fiscal year.

3 (3) The total amount of credit, statewide, that may be taken in any
4 fiscal year shall not exceed two million five hundred thousand dollars.

5 (4) (a) Not later than June 1st of each year beginning in 2004, the
6 department shall publish the base credit for each taxpayer for the next
7 fiscal year.

8 (b) Not later than July 1st of each year beginning in 2004,
9 application for credit must be made to the department including but not
10 limited to the following information: Billing discounts given by the
11 applicant in fiscal year 2002; qualifying contributions given by the
12 applicant in the prior fiscal year; the amount of money received in the
13 prior fiscal year from customers for the purpose of assisting other
14 customers; the base credit for the next fiscal year for the applicant;
15 the qualifying contributions anticipated to be given in the next fiscal
16 year; and billing discounts anticipated to be given in the next fiscal
17 year. No credit under this section will be allowed to a taxpayer that
18 does not file the application by July 1st.

19 (c) Not later than August 1st of each year beginning in 2002, the
20 department shall notify each applicant of the amount of credit that may
21 be taken in that fiscal year.

22 (d) The balance of base credits not used by other taxpayers and gas
23 distribution businesses shall be ratably distributed to applicants
24 under the formula in subsection (1)(a) of this section. The total
25 amount of credit that may be taken by an applicant is the base credit
26 plus any ratable portion of unused base credit.

27 (5) The credit taken under this section is limited to the amount of
28 tax imposed under this chapter for the fiscal year. The credit must be
29 claimed in the fiscal year in which the billing reduction is made. Any
30 unused credit expires. Refunds shall not be given in place of credits.

31 (6) No credit may be taken for billing discounts made before July
32 1, 2001. Within two weeks of May 8, 2001, the department of community,
33 trade, and economic development shall notify the department in writing
34 of the grants received in fiscal year 2001 by each taxpayer and gas
35 distribution business. Within four weeks of May 8, 2001, the
36 department shall publish the base credit for each taxpayer and gas
37 distribution business for fiscal year 2002. Within eight weeks of May
38 8, 2001, application to the department must be made showing the

1 information required in subsection (4)(b) of this section. Within
2 twelve weeks of May 8, 2001, the department shall notify each applicant
3 of the amount of credit that may be taken in fiscal year 2002.

4 NEW SECTION. **Sec. 8.** (1) In computing tax under this chapter, a
5 taxpayer may deduct from gross income the lesser of the amounts
6 determined under subsections (2) through (4) of this section.

7 (2)(a) Fifty percent of wholesale power cost paid during the
8 reporting period, if the taxpayer has fewer than five and one-half
9 customers per mile of line.

10 (b) Forty percent of wholesale power cost paid during the reporting
11 period, if the taxpayer has more than five and one-half but less than
12 eleven customers per mile.

13 (c) Thirty percent of the wholesale power cost paid during the
14 reporting period, if the taxpayer has more than eleven but less than
15 seventeen customers per mile of line.

16 (d) Zero if the taxpayer has more than seventeen customers per mile
17 of line.

18 (3) Wholesale power cost multiplied by the percentage by which the
19 average retail electric power rates for the taxpayer exceed the state
20 average electric power rate. If more than fifty percent of the
21 kilowatt hours sold by a taxpayer are sold to irrigators, then only
22 sales to nonirrigators shall be used to calculate the average electric
23 power rate for that taxpayer. For purposes of this subsection, the
24 department shall determine state average electric power rate each year
25 based on the most recent available data and shall inform taxpayers of
26 its determination.

27 (4) Four hundred thousand dollars per month.

28 **Sec. 9.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to read
29 as follows:

30 For the purposes of this chapter, unless otherwise required by the
31 context:

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

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

5 (3) "Railroad car business" means the business of operating stock
6 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
7 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
8 other kinds of cars used for transportation of property or persons upon
9 the line of any railroad operated in this state when such railroad is
10 not owned or leased by the person engaging in such business.

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

13 ~~(5) ("Light and power business" means the business of operating a
14 plant or system for the generation, production or distribution of
15 electrical energy for hire or sale and/or for the wheeling of
16 electricity for others.~~

17 ~~(6))~~ "Telegraph business" means the business of affording
18 telegraphic communication for hire.

19 ~~((7))~~ (6) "Gas distribution business" means the business of
20 operating a plant or system for the production or distribution for hire
21 or sale of gas, whether manufactured or natural.

22 ~~((8))~~ (7) "Motor transportation business" means the business
23 (except urban transportation business) of operating any motor propelled
24 vehicle by which persons or property of others are conveyed for hire,
25 and includes, but is not limited to, the operation of any motor
26 propelled vehicle as an auto transportation company (except urban
27 transportation business), common carrier or contract carrier as defined
28 by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
29 business" shall not mean or include the transportation of logs or other
30 forest products exclusively upon private roads or private highways.

31 ~~((9))~~ (8) "Urban transportation business" means the business of
32 operating any vehicle for public use in the conveyance of persons or
33 property for hire, insofar as (a) operating entirely within the
34 corporate limits of any city or town, or within five miles of the
35 corporate limits thereof, or (b) operating entirely within and between
36 cities and towns whose corporate limits are not more than five miles
37 apart or within five miles of the corporate limits of either thereof.
38 Included herein, but without limiting the scope hereof, is the business

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

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

18 ~~((11))~~ (10) "Tugboat business" means the business of operating
19 tugboats, towboats, wharf boats or similar vessels in the towing or
20 pushing of vessels, barges or rafts for hire.

21 ~~((12))~~ (11) "Gross income" means the value proceeding or accruing
22 from the performance of the particular public service or transportation
23 business involved, including operations incidental thereto, but without
24 any deduction on account of the cost of the commodity furnished or
25 sold, the cost of materials used, labor costs, interest, discount,
26 delivery costs, taxes, or any other expense whatsoever paid or accrued
27 and without any deduction on account of losses.

28 ~~((13))~~ (12) The meaning attributed, in chapter 82.04 RCW, to the
29 term "tax year," "person," "value proceeding or accruing," "business,"
30 "engaging in business," "in this state," "within this state," "cash
31 discount" and "successor" shall apply equally in the provisions of this
32 chapter.

33 **Sec. 10.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read
34 as follows:

35 (1) There is levied and there shall be collected from every person
36 a tax for the act or privilege of engaging within this state in any one

1 or more of the businesses herein mentioned. The tax shall be equal to
2 the gross income of the business, multiplied by the rate set out after
3 the business, as follows:

4 (a) Express, sewerage collection, and telegraph businesses: Three
5 and six-tenths percent;

6 ~~(b) ((Light and power business: Three and sixty two one hundredths
7 percent;~~

8 ~~(c))~~ Gas distribution business: Three and six-tenths percent;

9 ~~((d))~~ (c) Urban transportation business: Six-tenths of one
10 percent;

11 ~~((e))~~ (d) Vessels under sixty-five feet in length, except
12 tugboats, operating upon the waters within the state: Six-tenths of
13 one percent;

14 ~~((f))~~ (e) Motor transportation, railroad, railroad car, and
15 tugboat businesses, and all public service businesses other than ones
16 mentioned above: One and eight-tenths of one percent;

17 ~~((g))~~ (f) Water distribution business: Four and seven-tenths
18 percent.

19 (2) An additional tax is imposed equal to the rate specified in RCW
20 82.02.030 multiplied by the tax payable under subsection (1) of this
21 section.

22 (3) Twenty percent of the moneys collected under subsection (1) of
23 this section on water distribution businesses and sixty percent of the
24 moneys collected under subsection (1) of this section on sewerage
25 collection businesses shall be deposited in the public works assistance
26 account created in RCW 43.155.050.

27 **Sec. 11.** RCW 82.16.050 and 2000 c 245 s 1 are each amended to read
28 as follows:

29 In computing tax there may be deducted from the gross income the
30 following items:

31 (1) Amounts derived by municipally owned or operated public service
32 businesses, directly from taxes levied for the support or maintenance
33 thereof: PROVIDED, That this section shall not be construed to exempt
34 service charges which are spread on the property tax rolls and
35 collected as taxes;

36 (2) Amounts derived from the sale of commodities to persons in the
37 same public service business as the seller, for resale as such within

1 this state. This deduction is allowed only with respect to water
2 distribution, gas distribution or other public service businesses which
3 furnish water, gas or any other commodity in the performance of public
4 service businesses;

5 (3) Amounts actually paid by a taxpayer to another person taxable
6 under this chapter as the latter's portion of the consideration due for
7 services furnished jointly by both, if the total amount has been
8 credited to and appears in the gross income reported for tax by the
9 former;

10 (4) The amount of cash discount actually taken by the purchaser or
11 customer;

12 (5) The amount of credit losses actually sustained by taxpayers
13 whose regular books of accounts are kept upon an accrual basis;

14 (6) Amounts derived from business which the state is prohibited
15 from taxing under the Constitution of this state or the Constitution or
16 laws of the United States;

17 (7) Amounts derived from the distribution of water through an
18 irrigation system, for irrigation purposes;

19 (8) Amounts derived from the transportation of commodities from
20 points of origin in this state to final destination outside this state,
21 or from points of origin outside this state to final destination in
22 this state, with respect to which the carrier grants to the shipper the
23 privilege of stopping the shipment in transit at some point in this
24 state for the purpose of storing, manufacturing, milling, or other
25 processing, and thereafter forwards the same commodity, or its
26 equivalent, in the same or converted form, under a through freight rate
27 from point of origin to final destination; and amounts derived from the
28 transportation of commodities from points of origin in the state to an
29 export elevator, wharf, dock or ship side on tidewater or navigable
30 tributaries thereto from which such commodities are forwarded, without
31 intervening transportation, by vessel, in their original form, to
32 interstate or foreign destinations: PROVIDED, That no deduction will
33 be allowed when the point of origin and the point of delivery to such
34 an export elevator, wharf, dock, or ship side are located within the
35 corporate limits of the same city or town;

36 ~~(9) ((Amounts derived from the production, sale, or transfer of
37 electrical energy for resale within or outside the state or for
38 consumption outside the state;~~

1 ~~(10)~~) Amounts derived from the distribution of water by a
2 nonprofit water association and used for capital improvements by that
3 nonprofit water association;

4 ~~((11))~~ (10) Amounts paid by a sewerage collection business
5 taxable under RCW 82.16.020(1)(a) to a person taxable under chapter
6 82.04 RCW for the treatment or disposal of sewage.

7 **Sec. 12.** RCW 82.16.090 and 1988 c 228 s 1 are each amended to read
8 as follows:

9 Any customer billing issued by a (~~light or power business or~~) gas
10 distribution business that serves a total of more than twenty thousand
11 customers and operates within the state shall include the following
12 information:

13 (1) The rates and amounts of taxes paid directly by the customer
14 upon products or services rendered by the (~~light and power business~~
15 ~~or~~) gas distribution business; and

16 (2) The rate, origin and approximate amount of each tax levied upon
17 the revenue of the (~~light and power business or~~) gas distribution
18 business and added as a component of the amount charged to the
19 customer. Taxes based upon revenue of the (~~light and power business~~
20 ~~or~~) gas distribution business to be listed on the customer billing
21 need not include taxes levied by the federal government or taxes levied
22 under chapter(~~s 54.28,~~) 80.24(~~(7)~~) or 82.04 RCW.

23 **Sec. 13.** RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended
24 to read as follows:

25 As used in this chapter:

26 (1) "Operating property" means all of the property utilized by a
27 (~~public utility district~~) publicly owned utility in the operation of
28 a plant or system for the generation, transmission, or distribution of
29 electric energy for sale;

30 (2) "Taxing districts" means counties, cities, towns, school
31 districts, and road districts;

32 (3) "Distributes to consumers" means the sale of electric energy to
33 ultimate consumers thereof, and does not include sales of electric
34 energy for resale by the purchaser;

35 (4) "Wholesale value" means all costs of a (~~public utility~~
36 ~~district~~) publicly owned utility associated with the generation and

1 transmission of energy from its own generation and transmission system
2 to the point or points of inter-connection with a distribution system
3 owned and used by a ((~~district~~)) publicly owned utility to distribute
4 ((~~such~~)) energy to consumers, or in the event a distribution system
5 owned by a ((~~district~~)) publicly owned utility is not used to
6 distribute ((~~such~~)) energy, then the term means the gross revenues
7 derived by a ((~~district~~)) publicly owned utility from the sale of
8 ((~~such~~)) energy to consumers;

9 (5) "Thermal electric generating facility" means a steam-powered
10 electrical energy producing facility utilizing nuclear or fossil fuels;

11 (6) "Placed in operation" means delivery of energy into a
12 transmission or distribution system for use or sale in ((~~such~~)) a
13 manner as to establish a value accruing to the power plant operator,
14 except operation incidental to testing or startup adjustments;

15 (7) "Impacted area" for a thermal electric generating facility on
16 a federal reservation means that area in the state lying within thirty-
17 five statute miles of the most commonly used entrance of the federal
18 reservation and which is south of the southern boundary of township
19 fifteen north;

20 (8) "Publicly owned utility" means a public utility district, city,
21 or town operating a plant or system for the generation, transmission,
22 or distribution of electric energy for sale;

23 (9) "Telecommunications," "telecommunications facilities," and
24 "wholesale telecommunications services" have the same meaning as under
25 chapter 54.16 RCW.

26 **Sec. 14.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
27 read as follows:

28 "Gross revenue" ((~~shall~~)) means the amount received from the sale
29 of electric energy excluding any tax levied by a ((~~municipal~~
30 ~~corporation~~)) city or town upon the public utility district pursuant to
31 RCW 54.28.070 (as recodified by this act).

32 **Sec. 15.** RCW 54.28.020 and 1983 2nd ex.s. c 3 s 8 are each amended
33 to read as follows:

34 (1) There is ((~~hereby~~)) levied and there shall be collected from
35 every ((~~district~~)) publicly owned utility a tax for the act or
36 privilege of engaging within this state in the business of operating

1 works, plants or facilities for the generation, distribution and sale
2 of electric energy. With respect to each (~~such district~~) publicly
3 owned utility, except with respect to thermal electric generating
4 facilities taxed under RCW 54.28.025 (as recodified by this act),
5 (~~such~~) the tax shall be the sum of the following amounts: (a) Two
6 and twenty-eight one-hundredths percent of the gross revenues derived
7 by the (~~district~~) publicly owned utility from the sale of all
8 electric energy which it distributes to consumers who are served by a
9 distribution system owned by the (~~district~~) publicly owned utility;
10 (b) (~~five~~) twenty-one and fifteen one-hundredths percent of the first
11 four mills per kilowatt-hour of wholesale value of self-generated
12 energy distributed to consumers by a (~~district~~) publicly owned
13 utility; (c) (~~five~~) twenty-one and fifteen one-hundredths percent of
14 the first four mills per kilowatt-hour of revenue obtained by the
15 (~~district~~) publicly owned utility from the sale of self-generated
16 energy for resale.

17 (2) An additional tax is imposed equal to the rate specified in RCW
18 82.02.030 multiplied by the tax payable under subsection (1) of this
19 section.

20 NEW SECTION. Sec. 16. (1) There is levied and there shall be
21 collected from every publicly owned utility a tax for the act or
22 privilege of engaging within this state in the business of operating
23 works, plants, or facilities for the purposes of selling wholesale
24 telecommunications services. With respect to each such utility, such
25 tax shall be . . . percent of the wholesale value of the services sold.

26 (2) An additional tax is imposed equal to the rate specified in RCW
27 82.02.030 multiplied by the tax payable under subsection (1) of this
28 section.

29 Sec. 17. RCW 54.28.025 and 1983 2nd ex.s. c 3 s 9 are each amended
30 to read as follows:

31 (1) There is (~~hereby~~) levied and there shall be collected from
32 every (~~district~~) publicly owned utility operating a thermal electric
33 generating facility, as defined in RCW 54.28.010 (~~as now or hereafter~~
34 ~~amended~~) (as recodified by this act), having a design capacity of two
35 hundred fifty thousand kilowatts or more, located on a federal
36 reservation, which is placed in operation after September 21, 1977, a

1 tax for the act or privilege of engaging within the state in the
2 business of generating electricity for use or sale, equal to one and
3 one-half percent of wholesale value of energy produced for use or sale,
4 except energy used in the operation of component parts of the power
5 plant and associated transmission facilities under control of the
6 person operating the power plant.

7 (2) An additional tax is imposed equal to the rate specified in RCW
8 82.02.030 multiplied by the tax payable under subsection (1) of this
9 section.

10 **Sec. 18.** RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended
11 to read as follows:

12 On or before the fifteenth day of March of each year, each
13 ~~((district))~~ publicly owned utility subject to this tax shall file with
14 the department of revenue a report verified by the affidavit of its
15 manager or secretary on forms prescribed by the department of revenue.
16 ~~((Such))~~ The report shall state (1) the gross revenues derived by the
17 ~~((district))~~ publicly owned utility from the sale of all distributed
18 energy to consumers and the respective amounts derived from ~~((such))~~
19 sales within each county; (2) the gross revenues derived by the
20 ~~((district))~~ publicly owned utility from the sale of self-generated
21 energy for resale; (3) all revenue derived by the publicly owned
22 utility from the sale of wholesale telecommunications services; (4) the
23 amount of all generated energy distributed from each of the facilities
24 subject to taxation by a ~~((district))~~ publicly owned utility from its
25 own generating facilities, the wholesale value ~~((thereof))~~, and the
26 basis on which the value is computed; ~~((+4))~~ (5) the total cost of all
27 generating facilities and the cost of acquisition of land and land
28 rights for ~~((such))~~ facilities or for reservoir purposes in each
29 county; (6) the total cost to build and maintain all wholesale
30 telecommunications facilities; and ~~((+5) such))~~ (7) other and further
31 information as the department of revenue reasonably may require in
32 order to administer the provisions of this chapter. In case of failure
33 by a ~~((district))~~ publicly owned utility to file ~~((such))~~ a report, the
34 department may proceed to determine the information, which
35 determination shall be contestable by the ~~((district))~~ publicly owned
36 utility only for actual fraud.

1 **Sec. 19.** RCW 54.28.040 and 1996 c 149 s 16 are each amended to
2 read as follows:

3 (1) Before May 1st, the department of revenue shall compute the tax
4 imposed by this chapter for the last preceding calendar year and notify
5 the ~~((district))~~ publicly owned utility of the amount ~~((thereof))~~,
6 which shall be payable on or before the following June 1st.

7 (2) If payment of any tax is not received by the department on or
8 before the due date, there shall be assessed a penalty of five percent
9 of the amount of the tax; if the tax is not received within one month
10 of the due date, there shall be assessed a total penalty of ten percent
11 of the amount of the tax; and if the tax is not received within two
12 months of the due date, there shall be assessed a total penalty of
13 twenty percent of the amount of the tax.

14 (3) Upon receipt of the amount of each tax imposed the department
15 of revenue shall deposit the same with the state treasurer, who shall
16 deposit four percent of the revenues received under RCW 54.28.020(1)
17 ~~((and))~~, 54.28.025(1) (as recodified by this act), and section 16(1) of
18 this act, and all revenues received under RCW 54.28.020(2) ~~((and))~~,
19 54.28.025(2) (as recodified by this act), and section 16(2) of this act
20 in the general fund of the state and shall distribute the remainder
21 ~~((in the manner hereinafter))~~ as set forth in RCW 54.28.050 and
22 54.28.055 (as recodified by this act). The state treasurer shall send
23 a duplicate copy of each transmittal to the department of revenue.

24 **Sec. 20.** RCW 54.28.050 and 1982 1st ex.s. c 35 s 21 are each
25 amended to read as follows:

26 (1) After computing the tax imposed by RCW 54.28.020(1) (as
27 recodified by this act) and section 16(1) of this act and making the
28 distribution under RCW 54.28.040 (as recodified by this act), the
29 department of revenue shall instruct the state treasurer, after placing
30 thirty-seven and six-tenths percent in the state general fund to be
31 dedicated for the benefit of the public schools, to distribute the
32 balance as follows:

33 (a) For amounts collected under RCW 54.28.020(1) (a) (as recodified
34 by this act), the balance shall be distributed to each county in
35 proportion to the gross revenue from sales made within each county;
36 ~~((and to distribute the balance))~~

1 (b) For amounts collected under section 16(1) of this act, if the
2 telecommunications facilities are located in only one county, the
3 balance shall be distributed to the county in which the wholesale
4 telecommunications facilities are located. If the telecommunications
5 facilities are located in more than one county, the balance shall be
6 distributed in a pro rata manner to each applicable county based on the
7 cost of the telecommunications facilities; and

8 (c) For amounts collected under RCW 54.28.020(1) (b) and (c) (as
9 recodified by this act), the balance shall be distributed as follows:
10 If the entire generating facility, including reservoir, if any, is in
11 a single county then all of the balance to the county where ~~((such))~~
12 the generating facility is located. If any reservoir is in more than
13 one county, then to each county in which the reservoir or any portion
14 ~~((thereof))~~ is located, a percentage equal to the percentage determined
15 by dividing the total cost of the generating facilities, including
16 adjacent switching facilities, into twice the cost of land and land
17 rights acquired for any reservoir within each county, land and land
18 rights to be defined the same as used by the federal power commission.
19 If the powerhouse and dam, if any, in connection with ~~((such))~~ the
20 reservoir are in more than one county, the balance shall be divided
21 sixty percent to the county in which the owning ~~((district))~~ publicly
22 owned utility is located and forty percent to the other county or
23 counties or if ~~((said))~~ the powerhouse and dam, if any, are owned by a
24 joint operating agency organized under chapter 43.52 RCW, or by more
25 than one ~~((district))~~ publicly owned utility or are outside the county
26 of the owning ~~((district))~~ publicly owned utility, then to be divided
27 equally between the counties in which ~~((such))~~ the facilities are
28 located. If all of the powerhouse and dam, if any, are in one county,
29 then the balance shall be distributed to the county in which the
30 facilities are located.

31 (2) The provisions of this section shall not apply to the
32 distribution of taxes collected under RCW 54.28.025 (as recodified by
33 this act).

34 **Sec. 21.** RCW 54.28.055 and 1986 c 189 s 1 are each amended to read
35 as follows:

36 (1) After computing the tax imposed by RCW 54.28.025(1) (as
37 recodified by this act) and after making the distribution specified in

1 RCW 54.28.040 (as recodified by this act), the department of revenue
2 shall instruct the state treasurer to distribute the amount collected
3 as follows:

4 (a) Fifty percent to the state general fund for the support of
5 schools; and

6 (b) Twenty-two percent to the counties, twenty-three percent to the
7 cities, three percent to the fire protection districts, and two percent
8 to the library districts.

9 (2) Each county, city, fire protection district and library
10 district shall receive a percentage of the amount for distribution to
11 counties, cities, fire protection districts and library districts,
12 respectively, in the proportion that the population of ~~((such))~~ the
13 ~~((district))~~ publicly owned utility residing within the impacted area
14 bears to the total population of all ~~((such districts))~~ publicly owned
15 utilities residing within the impacted area. For the purposes of this
16 chapter, the term "library district" includes only regional libraries
17 as defined in RCW 27.12.010(4), rural county library districts as
18 defined in RCW 27.12.010(5), intercounty rural library districts as
19 defined in RCW 27.12.010(6), and island library districts as defined in
20 RCW 27.12.010(7). The population of a library district, for purposes
21 of ~~((such))~~ a distribution, shall not include any population within the
22 library district and the impact area that also is located within a city
23 or town.

24 (3) If any distribution pursuant to subsection (1)(b) of this
25 section cannot be made, then that share shall be prorated among the
26 state and remaining local districts.

27 (4) All distributions directed by this section to be made on the
28 basis of population shall be calculated in accordance with data to be
29 provided by the office of financial management.

30 **Sec. 22.** RCW 54.28.060 and 1996 c 149 s 12 are each amended to
31 read as follows:

32 Interest at the rate as computed under RCW 82.32.050(2) shall be
33 added to the tax ~~((hereby))~~ imposed from the due date until the date of
34 payment. The tax ~~((shall))~~ constitutes a debt to the state and may be
35 collected as such.

1 **Sec. 23.** RCW 54.28.070 and 1941 c 245 s 3 are each amended to read
2 as follows:

3 Any city or town in which a public utility district operates works,
4 plants, or facilities for the distribution and sale of electricity, or
5 for the sale of wholesale telecommunications services, shall have the
6 power to levy and collect from ~~((such))~~ the district a tax under this
7 section. With respect to the distribution and sale of electricity, a
8 tax may be imposed on the gross revenues derived by ~~((such))~~ the
9 district from the sale of electricity within the city or town,
10 exclusive of the revenues derived from the sale of electricity for
11 purposes of resale. ~~((Such))~~ With respect to the sale of wholesale
12 telecommunications services, a tax may be imposed under the applicable
13 authority in chapter 35.21 RCW. The tax when levied shall be a debt of
14 the district, and may be collected as such. Any ~~((such))~~ district
15 shall have the power to add the amount of ~~((such))~~ tax to the rates or
16 charges it makes for electricity ~~((se))~~ or wholesale telecommunications
17 services sold within the limits of ~~((such))~~ the city or town.

18 **Sec. 24.** RCW 54.28.080 and 1957 c 278 s 8 are each amended to read
19 as follows:

20 Whenever any public utility district acquires an operating property
21 from any private person, firm, or corporation and a portion of the
22 operating property is situated within the boundaries of any school
23 district and at the time of ~~((such))~~ acquisition there is an
24 outstanding bonded indebtedness of the school district, then the public
25 utility district shall, in addition to the tax imposed by this chapter,
26 pay directly to the school district a proportion of all subsequent
27 payments by the school district of principal and interest on ~~((said))~~
28 the bonded indebtedness, ~~((said))~~ the additional payments to be
29 computed and paid as follows: The amount of principal and interest
30 required to be paid ~~((by))~~ to the school district shall be multiplied
31 by the percentage which the assessed value of the property acquired
32 bore to the assessed value of the total property in the school district
33 at the time of ~~((such))~~ the acquisition. ~~((Such))~~ The additional
34 amounts shall be paid by the public utility district to the school
35 district not less than fifteen days prior to the date that ~~((such))~~ the
36 principal and interest payments are required to be paid by the school
37 district. In addition, any public utility district which acquires from

1 any private person, firm, or corporation an operating property situated
2 within a school district, is authorized to make voluntary payments to
3 ((such)) the school district for the use and benefit of the school
4 district.

5 **Sec. 25.** RCW 54.28.090 and 1980 c 154 s 9 are each amended to read
6 as follows:

7 The county legislative authority of each county shall direct the
8 county treasurer to deposit funds to the credit of each taxing district
9 in the county, other than school districts, according to the manner
10 they deem most equitable; except not less than an amount equal to
11 three-fourths of one percent of the gross revenues obtained by a
12 district from the sale of electric energy within any incorporated city
13 or town shall be remitted to ((such)) the city or town. Information
14 furnished by the district to the county legislative authority shall be
15 the basis for the determination of the amount to be paid to ((such))
16 cities or towns.

17 The provisions of this section shall not apply to the distribution
18 of taxes collected under RCW 54.28.025 (as recodified by this act).

19 **Sec. 26.** RCW 54.28.100 and 1957 c 278 s 11 are each amended to
20 read as follows:

21 All money((s)) received by any taxing district shall be used for
22 purposes for which state taxes may be used under the provisions of the
23 state Constitution.

24 **Sec. 27.** RCW 54.28.110 and 1957 c 278 s 13 are each amended to
25 read as follows:

26 Whenever((~~7~~ hereafter ~~7~~)) property is removed from the tax rolls as
27 a result of the acquisition of operating property or the construction
28 of a generating plant by a public utility district, ((such)) the public
29 utility district may make voluntary payments to any municipal
30 corporation or other entity authorized to levy and collect taxes in an
31 amount not to exceed the amount of tax revenues being received by
32 ((such)) the municipal corporation or other entity at the time of
33 ((said)) the acquisition or ((said)) construction and which are lost by
34 ((such)) the municipal corporation or other entity as a result of the
35 acquisition of operating property or the construction of a generating

1 plant by the public utility district(~~(:—PROVIDED, That)~~). However,
2 this section shall not apply to taxing districts as defined in RCW
3 54.28.010(~~(, and:—PROVIDED FURTHER, That)~~) (as recodified by this act)
4 and in the event any operating property ((~~se~~)) removed from the tax
5 rolls is dismantled or partially dismantled the payment which may be
6 paid ((~~hereunder~~)) shall be correspondingly reduced.

7 **Sec. 28.** RCW 54.28.120 and 1957 c 278 s 14 are each amended to
8 read as follows:

9 In the event any (~~district hereafter~~) publicly owned utility
10 purchases or otherwise acquires electric utility properties comprising
11 all or a portion of an electric generation ((~~and/or~~)) or distribution
12 system, or telecommunications properties for the purposes of providing
13 wholesale telecommunications services, from a public service company,
14 as defined in RCW 80.04.010, the total amount of privilege taxes
15 imposed under this chapter (~~(278, Laws of 1957)~~) to be paid by the
16 (~~district~~) publicly owned utility annually on the combined operating
17 property within each county where (~~such~~) the utility property is
18 located, irrespective of any other basis of levy contained in this
19 chapter, will be not less than the combined total of the ad valorem
20 taxes, based on regular levies, last levied against the electric
21 utility property constituting the system so purchased or acquired, or
22 the telecommunications properties purchased or acquired, plus the taxes
23 paid by the (~~district~~) publicly owned utility for the same year on
24 the revenues of other operating property in the same county under terms
25 of this chapter. If all or any portion of the property so acquired is
26 subsequently sold, or if rates charged to purchasers of electric energy
27 or wholesale telecommunications services are reduced, the amount of
28 privilege tax required under this section shall be proportionately
29 reduced.

30 NEW SECTION. **Sec. 29.** RCW 54.28.010, 54.28.011, 54.28.020,
31 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 54.28.060,
32 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and 54.28.120
33 are each recodified as a new chapter in Title 82 RCW.

34 NEW SECTION. **Sec. 30.** Section 16 of this act is added to the new
35 chapter created in section 29 of this act.

1 NEW SECTION. **Sec. 31.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 32.** Sections 13 through 30 of this act are
6 necessary for the immediate preservation of the public peace, health,
7 or safety, or support of the state government and its existing public
8 institutions, and take effect July 1, 2003.

9 NEW SECTION. **Sec. 33.** Sections 1 through 8 of this act constitute
10 a new chapter in Title 82 RCW.

11 NEW SECTION. **Sec. 34.** Captions used in sections 1 through 4 of
12 this act are not any part of the law.

13 NEW SECTION. **Sec. 35.** Sections 1 through 12, 33, and 34 of this
14 act take effect January 1, 2004.

--- END ---

APPENDIX 7

SUBSTITUTE HOUSE BILL 1316

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Technology, Telecommunications & Energy
(originally sponsored by Representatives Morris and Anderson)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to utility taxation; and creating a new section.

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

3 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
4 replace a public utility tax system that automatically increases in a
5 percentage equal to an increase in price with a system that the
6 taxpayer controls through consumption.

7 It is the further intent of the legislature to replace a public
8 utility tax system that gives a competitive advantage to electricity
9 providers outside the state of Washington with one that creates a more
10 equitable tax base that is competitively fair.

11 It is the further intent of the legislature to replace a utility
12 tax system that gives a competitive advantage to some electricity
13 providers inside the state of Washington with one that creates a more
14 equitable tax system that is competitively fair.

--- END ---

APPENDIX 8

HOUSE BILL 2609

State of Washington

59th Legislature

2006 Regular Session

By Representatives Morris, B. Sullivan and Linville

Read first time 01/11/2006. Referred to Committee on Technology,
Energy & Communications.

1 AN ACT Relating to utility taxation; amending RCW 82.16.010,
2 82.16.020, 82.16.050, 82.16.090, 54.28.010, 54.28.011, 54.28.020,
3 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 54.28.060,
4 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and 54.28.120;
5 adding new chapters to Title 82 RCW; creating new sections; recodifying
6 RCW 54.28.010, 54.28.011, 54.28.020, 54.28.025, 54.28.030, 54.28.040,
7 54.28.050, 54.28.055, 54.28.060, 54.28.070, 54.28.080, 54.28.090,
8 54.28.100, 54.28.110, and 54.28.120; and providing effective dates.

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

10 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Amount of electricity sold at retail" means the amount of
14 kilowatt hours of electricity reported as retail sales to ultimate
15 consumers to the federal energy information administration on form EIA-
16 861 or its successor.

17 (2) "Amount of electricity sold at wholesale" means the amount of
18 kilowatt hours of electricity reported as sales of electricity for
19 resale to:

1 (a) The federal energy information administration on form EIA-412
2 or its successor;

3 (b) The federal energy regulatory commission on form 1 or its
4 successor; or

5 (c) To the department on an affidavit in a form and manner as
6 prescribed by the department, if the taxpayer is not required to report
7 sales of electricity for resale under (a) or (b) of this subsection.

8 (3) "Customer" or "purchaser" means a person who acquires for
9 consideration electricity for use or consumption and not for resale.

10 (4) "Department" means the department of revenue.

11 (5) "Distribution services provider" means a person controlling or
12 operating distribution facilities for distribution of electricity to
13 the public. A distribution services provider includes a purchaser who
14 takes electricity directly from a transmission line and a purchaser who
15 generates electricity for the purchaser's own use but does not include
16 electricity generated by the purchaser for noncommercial use or for
17 agricultural use.

18 (6) "Net amount of electricity generated" means the amount of
19 kilowatt hours of electricity reported as net generation to the federal
20 energy information administration on form EIA-906 or its successor.

21 (7) "Person" is defined as provided in RCW 82.04.030.

22 NEW SECTION. **Sec. 2.** WHOLESALE ENERGY TRANSACTION TAX--RATE OF
23 TAX--EXEMPTIONS--COST RECOVERY. (1)(a) Except as provided in
24 subsection (2) of this section, a wholesale energy transaction tax is
25 imposed upon electricity transmitted within the state as provided in
26 this section. The tax is imposed at a rate of two-tenths of one cent
27 per kilowatt hour of electricity.

28 (b)(i) For electricity produced in the state for delivery outside
29 of the state, the taxpayer is the person that introduces the
30 electricity onto transmission lines. The amount of electricity subject
31 to tax under this subsection shall be determined by an apportionment
32 formula under (b)(ii) of this subsection. The taxpayer shall remit the
33 tax annually to the department under the provisions of chapter 82.32
34 RCW.

35 (ii) The amount of electricity subject to tax under this subsection
36 (1)(b)(ii) is, for the previous calendar year, the greater of the
37 following:

1 (A) Ninety-five percent of the net amount of electricity generated
2 by the taxpayer within the state, less the sum of the amount of
3 electricity sold at retail within the state and the amount of
4 electricity sold at wholesale to distribution services providers
5 located within the state; or

6 (B) Zero.

7 (c) For electricity produced for delivery within the state, the
8 taxpayer is the distribution services provider. The tax base is the
9 amount of kilowatt hours of electricity delivered to the distribution
10 services provider.

11 (2)(a) Electricity transmitted through the state that is not
12 produced or delivered in the state is exempt from the tax imposed by
13 this section.

14 (b) An agency of the United States government that produces
15 electricity within the state is exempt from the provisions in
16 subsection (1)(b) of this section.

17 (c) Electricity delivered to a purchaser that receives its power
18 directly from a transmission or distribution facility owned by an
19 entity of the United States government is exempt from the tax imposed
20 by this section.

21 (3) A distribution services provider is allowed to recover the tax
22 imposed by this section and the administrative costs to comply with
23 this chapter in its rates.

24 NEW SECTION. **Sec. 3.** MULTISTATE EXEMPTION. A person, upon proof
25 that the person has paid a tax in another state on the transmission of
26 electricity, is allowed a credit against the tax imposed by this
27 chapter if the tax has been paid in another state.

28 NEW SECTION. **Sec. 4.** ADMINISTRATION. Chapter 82.32 RCW applies
29 to the taxes imposed in this chapter. The tax due dates, reporting
30 periods, and return requirements applicable to chapter 82.04 RCW apply
31 to the taxes imposed in this chapter.

32 NEW SECTION. **Sec. 5.** (1) The following definitions apply to this
33 section:

34 (a) "Qualifying project" means a project designed to achieve job
35 creation or business retention, to add or upgrade nonelectrical

1 infrastructure, to add or upgrade health and safety facilities, to
2 accomplish energy and water use efficiency improvements, including
3 renewable energy development, or to add or upgrade emergency services
4 in any designated qualifying rural area.

5 (b) "Qualifying rural area" means:

6 (i) A rural county, which is a county with a population density of
7 less than one hundred persons per square mile as determined by the
8 office of financial management and published each year by the
9 department for the period July 1st to June 30th; or

10 (ii) Any geographic area in the state that receives electricity
11 from a taxpayer with twelve thousand or fewer customers and with fewer
12 than twenty-six meters per mile of distribution line as determined and
13 published by the department effective July 1st of each year. The
14 department shall use current data provided by the electricity industry.

15 (c) "Electric utility rural economic development revolving fund"
16 means a fund devoted exclusively to funding qualifying projects in
17 qualifying rural areas.

18 (d) "Local board" is a board of directors with at least, but not
19 limited to, three members representing local businesses and community
20 groups who have been appointed by the sponsoring electric utility to
21 oversee and direct the activities of the electric utility rural
22 economic development revolving fund.

23 (2) A taxpayer with fewer than twenty-six active meters per mile of
24 distribution line in any geographic area in the state shall be allowed
25 a credit against taxes due under this chapter in an amount equal to
26 fifty percent of contributions made in any calendar year directly to an
27 electric utility rural economic development revolving fund. The credit
28 shall be taken in a form and manner as required by the department. The
29 credit under this section shall not exceed twenty-five thousand dollars
30 per calendar year per taxpayer. The credit may not exceed the tax that
31 would otherwise be due under this chapter. Refunds shall not be
32 granted in the place of credits. Expenditures not used to earn a
33 credit in one calendar year may not be used to earn a credit in
34 subsequent years.

35 (3) The right to earn tax credits under this section expires
36 December 31, 2010.

37 (4) To qualify for the credit in subsection (2) of this section,
38 the taxpayer shall establish an electric utility rural economic

1 development revolving fund which is governed by a local board whose
2 members shall reside in the qualifying rural area served by the
3 taxpayer. The local board shall have authority to determine all
4 criteria and conditions for the expenditure of funds from the electric
5 utility rural economic development revolving fund, and for the terms
6 and conditions of repayment.

7 (5) Any funds repaid to the electric utility rural economic
8 development revolving fund by recipients shall be made available for
9 additional qualifying projects.

10 (6) If at any time the electric utility rural economic development
11 revolving fund is dissolved, any money claimed as a tax credit under
12 this section shall either be granted to a qualifying project or
13 refunded to the state within two years of termination.

14 (7) The total amount of credits that may be used in any fiscal year
15 shall not exceed three hundred fifty thousand dollars in any fiscal
16 year. The department shall allow the use of earned credits on a first-
17 come, first-served basis. Unused earned credits may be carried over to
18 subsequent years.

19 NEW SECTION. Sec. 6. (1) Unless the context clearly requires
20 otherwise, the definitions in this subsection apply throughout this
21 section.

22 (a) "Direct service industrial customer" means a person who is an
23 industrial customer that contracts for the purchase of power from the
24 Bonneville Power Administration for direct consumption as of July 1,
25 2006. "Direct service industrial customer" includes a person who is a
26 subsidiary that is more than fifty percent owned by a direct service
27 industrial customer and who receives power from the Bonneville Power
28 Administration pursuant to the parent's contract for power.

29 (b) "Facility" means a gas turbine electrical generation facility
30 that does not exist on July 1, 2006.

31 (c) "Average annual employment" means the total employment in this
32 state for a calendar year at the direct service industrial customer's
33 location where electricity from the facility will be consumed.

34 (2) Effective January 1, 2007, a credit is allowed against the tax
35 due under this chapter on sales of electricity made from a facility to
36 a direct service industrial customer if the contract for sale of

1 electricity to a direct service industrial customer contains the
2 following terms:

3 (a) Sales of electricity from the facility to the direct service
4 industrial customer will be made for ten consecutive years or more;

5 (b) The price charged for the electricity will be reduced by an
6 amount equal to the tax credit; and

7 (c) Disallowance of all or part of the credit under subsection (5)
8 of this section is a breach of contract and the damages to be paid by
9 the direct service industrial customer to the facility are the amount
10 of tax credit disallowed.

11 (3) The credit is equal to the gross proceeds from the sale of the
12 electricity to a direct service industrial customer multiplied by the
13 rate in effect at the time of the sale for the taxpayer under section
14 2 of this act. The credit may be used each reporting period for sixty
15 months following the first month electricity is sold from a facility to
16 a direct service industrial customer. Credit under this section is
17 limited to the amount of tax imposed under this chapter. Refunds shall
18 not be given in place of credits and credits may not be carried over to
19 subsequent calendar years.

20 (4) Application for credit shall be made before the first sale of
21 electricity from a facility to a direct service industrial customer.
22 The application shall be in a form and manner prescribed by the
23 department and shall include, but is not limited to, information
24 regarding the location of the facility, identification of the direct
25 service industrial customer who will receive electricity from the
26 facility, the projected date of the first sale of electricity to a
27 direct service industrial customer, the date construction is projected
28 to begin or did begin, and the average annual employment in the state
29 of the direct service industrial customer who will receive electricity
30 from the facility for the six calendar years immediately preceding the
31 year in which the application is made. A copy of the contract for sale
32 of electricity must be attached to the application. The department
33 shall rule on the application within thirty days of receipt.

34 (5) All or part of the credit shall be disallowed and must be paid
35 if the average of the direct service industrial customer's average
36 annual employment for the five calendar years subsequent to the
37 calendar year containing the first month of sale of electricity from a
38 facility to a direct service industrial customer is less than the six-

1 year average annual employment stated on the application for credit
 2 under this section. The direct service industrial customer shall
 3 certify to the department and to the facility by June 1st of the sixth
 4 calendar year following the calendar year in which the month of first
 5 sale occurs the average annual employment for each of the five prior
 6 calendar years. All or part of the credit that shall be disallowed and
 7 must be paid is commensurate with the decrease in the five-year average
 8 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

17 (6) (a) Payments on credit that is disallowed shall begin in the
 18 sixth calendar year following the calendar year in which the month
 19 following the first month of sale of electricity from a facility to a
 20 direct service industrial customer occurs. The first payment will be
 21 due on or before December 31st with subsequent annual payments due on
 22 or before December 31st of the following four years according to the
 23 schedule in this subsection.

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

30 (b) The department may authorize an accelerated payment schedule
 31 upon request of the taxpayer.

32 (c) Interest shall not be charged on the credit that is disallowed
 33 for the sixty-month period the credit may be taken, although all other
 34 penalties and interest applicable to delinquent excise taxes may be

1 assessed and imposed. The debt for credit that is disallowed and must
2 be paid will not be extinguished by insolvency or other failure of the
3 taxpayer. Transfer of ownership of the facility does not affect
4 eligibility for this credit. However, the credit is available to the
5 successor only if the eligibility conditions of this section are met.

6 (7) The employment security department shall make, and certify to
7 the department, all determinations of employment under this section as
8 requested by the department.

9 NEW SECTION. **Sec. 7.** (1) Unless the context clearly requires
10 otherwise, the definitions in this subsection apply throughout this
11 section.

12 (a) "Base credit" means the maximum amount of credit against the
13 tax imposed by this chapter that each taxpayer may take each fiscal
14 year as calculated by the department. The base credit is equal to the
15 proportionate share that the total grants received by each taxpayer in
16 the prior fiscal year bears to the total grants received by all
17 taxpayers and gas distribution businesses under RCW 82.16.0497 in the
18 prior fiscal year multiplied by two million five hundred thousand
19 dollars.

20 (b) "Billing discount" means a reduction in the amount charged for
21 providing service to qualifying persons in Washington made by a
22 taxpayer. Billing discount does not include grants received by the
23 taxpayer.

24 (c) "Grant" means funds provided to a taxpayer by the department of
25 community, trade, and economic development or by a qualifying
26 organization.

27 (d) "Low-income home energy assistance program" means energy
28 assistance programs for low-income households as defined on December
29 31, 2005, in the low-income home energy assistance act of 1981 as
30 amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

31 (e) "Qualifying person" means a Washington resident who applies for
32 assistance and qualifies for a grant regardless of whether that person
33 receives a grant.

34 (f) "Qualifying contribution" means money given by a taxpayer to a
35 qualifying organization, exclusive of money received in the prior
36 fiscal year from its customers for the purpose of assisting other
37 customers.

1 (g) "Qualifying organization" means an entity that has a
2 contractual agreement with the department of community, trade, and
3 economic development to administer in a specified service area low-
4 income home energy assistance funds received from the federal
5 government and other funds that may be received by the entity.

6 (2) Subject to the limitations in this section, a taxpayer may take
7 a credit each fiscal year against the tax imposed under this chapter.

8 (a) (i) A credit may be taken for qualifying contributions if the
9 dollar amount of qualifying contributions for the fiscal year in which
10 the tax credit is taken is greater than one hundred twenty-five percent
11 of the dollar amount of qualifying contributions given in fiscal year
12 2006.

13 (ii) If no qualifying contributions were given in fiscal year 2006,
14 a credit shall be allowed for the first fiscal year that qualifying
15 contributions are given. Thereafter, credit shall be allowed if the
16 qualifying contributions given exceed one hundred twenty-five percent
17 of qualifying contributions given in the first fiscal year.

18 (iii) The amount of credit shall be fifty percent of the dollar
19 amount of qualifying contributions given in the fiscal year in which
20 the tax credit is taken.

21 (b) (i) A credit may be taken for billing discounts if the dollar
22 amount of billing discounts for the fiscal year in which the tax credit
23 is taken is greater than one hundred twenty-five percent of the dollar
24 amount of billing discounts given in fiscal year 2006.

25 (ii) If no billing discounts were given in fiscal year 2006, a
26 credit shall be allowed in the first fiscal year that billing discounts
27 are given. Thereafter, credit shall be allowed if the dollar amount of
28 billing discounts given exceeds one hundred twenty-five percent of
29 billing discounts given in the first fiscal year.

30 (iii) The amount of credit shall be fifty percent of the dollar
31 amount of the billing discounts given in the fiscal year in which the
32 tax credit is taken.

33 (c) The total amount of credit that may be taken for qualifying
34 contributions and billing discounts in a fiscal year is limited to the
35 base credit for the same fiscal year.

36 (3) The total amount of credit, statewide, that may be taken in any
37 fiscal year shall not exceed two million five hundred thousand dollars.

1 (4) (a) Not later than June 1st of each year beginning in 2007, the
2 department shall publish the base credit for each taxpayer for the next
3 fiscal year.

4 (b) Not later than July 1st of each year beginning in 2007,
5 application for credit must be made to the department including but not
6 limited to the following information: Billing discounts given by the
7 applicant in fiscal year 2006; qualifying contributions given by the
8 applicant in the prior fiscal year; the amount of money received in the
9 prior fiscal year from customers for the purpose of assisting other
10 customers; the base credit for the next fiscal year for the applicant;
11 the qualifying contributions anticipated to be given in the next fiscal
12 year; and billing discounts anticipated to be given in the next fiscal
13 year. No credit under this section will be allowed to a taxpayer that
14 does not file the application by July 1st.

15 (c) Not later than August 1st of each year beginning in 2007, the
16 department shall notify each applicant of the amount of credit that may
17 be taken in that fiscal year.

18 (d) The balance of base credits not used by other taxpayers and gas
19 distribution businesses shall be ratably distributed to applicants
20 under the formula in subsection (1)(a) of this section. The total
21 amount of credit that may be taken by an applicant is the base credit
22 plus any ratable portion of unused base credit.

23 (5) The credit taken under this section is limited to the amount of
24 tax imposed under this chapter for the fiscal year. The credit must be
25 claimed in the fiscal year in which the billing reduction is made. Any
26 unused credit expires. Refunds shall not be given in place of credits.

27 (6) No credit may be taken for billing discounts made before July
28 1, 2006. Within two weeks of July 1, 2007, the department of
29 community, trade, and economic development shall notify the department
30 in writing of the grants received in fiscal year 2006 by each taxpayer
31 and gas distribution business. Within four weeks of July 1, 2007, the
32 department shall publish the base credit for each taxpayer and gas
33 distribution business for fiscal year 2006. Within eight weeks of July
34 1, 2007, application to the department must be made showing the
35 information required in subsection (4)(b) of this section. Within
36 twelve weeks of July 1, 2007, the department shall notify each
37 applicant of the amount of credit that may be taken in fiscal year
38 2007.

1 **NEW SECTION. Sec. 8.** (1) In computing tax under this chapter, a
2 taxpayer may deduct from gross income the lesser of the amounts
3 determined under subsections (2) through (4) of this section.

4 (2)(a) Fifty percent of wholesale power cost paid during the
5 reporting period, if the taxpayer has fewer than five and one-half
6 customers per mile of line.

7 (b) Forty percent of wholesale power cost paid during the reporting
8 period, if the taxpayer has more than five and one-half but less than
9 eleven customers per mile.

10 (c) Thirty percent of the wholesale power cost paid during the
11 reporting period, if the taxpayer has more than eleven but less than
12 seventeen customers per mile of line.

13 (d) Zero if the taxpayer has more than seventeen customers per mile
14 of line.

15 (3) Wholesale power cost multiplied by the percentage by which the
16 average retail electric power rates for the taxpayer exceed the state
17 average electric power rate. If more than fifty percent of the
18 kilowatt hours sold by a taxpayer are sold to irrigators, then only
19 sales to nonirrigators shall be used to calculate the average electric
20 power rate for that taxpayer. For purposes of this subsection, the
21 department shall determine state average electric power rate each year
22 based on the most recent available data and shall inform taxpayers of
23 its determination.

24 (4) Four hundred thousand dollars per month.

25 **Sec. 9.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to read
26 as follows:

27 For the purposes of this chapter, unless otherwise required by the
28 context:

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

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

1 (3) "Railroad car business" means the business of operating stock
2 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
3 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
4 other kinds of cars used for transportation of property or persons upon
5 the line of any railroad operated in this state when such railroad is
6 not owned or leased by the person engaging in such business.

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

9 ~~(5) ("Light and power business" means the business of operating a
10 plant or system for the generation, production or distribution of
11 electrical energy for hire or sale and/or for the wheeling of
12 electricity for others.~~

13 ~~(6))~~ "Telegraph business" means the business of affording
14 telegraphic communication for hire.

15 ~~((7))~~ (6) "Gas distribution business" means the business of
16 operating a plant or system for the production or distribution for hire
17 or sale of gas, whether manufactured or natural.

18 ~~((8))~~ (7) "Motor transportation business" means the business
19 (except urban transportation business) of operating any motor propelled
20 vehicle by which persons or property of others are conveyed for hire,
21 and includes, but is not limited to, the operation of any motor
22 propelled vehicle as an auto transportation company (except urban
23 transportation business), common carrier or contract carrier as defined
24 by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
25 business" shall not mean or include the transportation of logs or other
26 forest products exclusively upon private roads or private highways.

27 ~~((9))~~ (8) "Urban transportation business" means the business of
28 operating any vehicle for public use in the conveyance of persons or
29 property for hire, insofar as (a) operating entirely within the
30 corporate limits of any city or town, or within five miles of the
31 corporate limits thereof, or (b) operating entirely within and between
32 cities and towns whose corporate limits are not more than five miles
33 apart or within five miles of the corporate limits of either thereof.
34 Included herein, but without limiting the scope hereof, is the business
35 of operating passenger vehicles of every type and also the business of
36 operating cartage, pickup, or delivery services, including in such
37 services the collection and distribution of property arriving from or

1 destined to a point within or without the state, whether or not such
2 collection or distribution be made by the person performing a local or
3 interstate line-haul of such property.

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

15 ~~((11))~~ (10) "Tugboat business" means the business of operating
16 tugboats, towboats, wharf boats or similar vessels in the towing or
17 pushing of vessels, barges or rafts for hire.

18 ~~((12))~~ (11) "Gross income" means the value proceeding or accruing
19 from the performance of the particular public service or transportation
20 business involved, including operations incidental thereto, but without
21 any deduction on account of the cost of the commodity furnished or
22 sold, the cost of materials used, labor costs, interest, discount,
23 delivery costs, taxes, or any other expense whatsoever paid or accrued
24 and without any deduction on account of losses.

25 ~~((13))~~ (12) The meaning attributed, in chapter 82.04 RCW, to the
26 term "tax year," "person," "value proceeding or accruing," "business,"
27 "engaging in business," "in this state," "within this state," "cash
28 discount" and "successor" shall apply equally in the provisions of this
29 chapter.

30 **Sec. 10.** RCW 82.16.020 and 1996 c 150 s 2 are each amended to read
31 as follows:

32 (1) There is levied and there shall be collected from every person
33 a tax for the act or privilege of engaging within this state in any one
34 or more of the businesses herein mentioned. The tax shall be equal to
35 the gross income of the business, multiplied by the rate set out after
36 the business, as follows:

1 (a) Express, sewerage collection, and telegraph businesses: Three
2 and six-tenths percent;

3 ~~(b) ((Light and power business: Three and sixty two one hundredths~~
4 ~~percent;~~

5 ~~(e))~~ Gas distribution business: Three and six-tenths percent;

6 ~~((d))~~ (c) Urban transportation business: Six-tenths of one
7 percent;

8 ~~((e))~~ (d) Vessels under sixty-five feet in length, except
9 tugboats, operating upon the waters within the state: Six-tenths of
10 one percent;

11 ~~((f))~~ (e) Motor transportation, railroad, railroad car, and
12 tugboat businesses, and all public service businesses other than ones
13 mentioned above: One and eight-tenths of one percent;

14 ~~((g))~~ (f) Water distribution business: Four and seven-tenths
15 percent.

16 (2) An additional tax is imposed equal to the rate specified in RCW
17 82.02.030 multiplied by the tax payable under subsection (1) of this
18 section.

19 (3) Twenty percent of the moneys collected under subsection (1) of
20 this section on water distribution businesses and sixty percent of the
21 moneys collected under subsection (1) of this section on sewerage
22 collection businesses shall be deposited in the public works assistance
23 account created in RCW 43.155.050.

24 **Sec. 11.** RCW 82.16.050 and 2004 c 153 s 308 are each amended to
25 read as follows:

26 In computing tax there may be deducted from the gross income the
27 following items:

28 (1) Amounts derived by municipally owned or operated public service
29 businesses, directly from taxes levied for the support or maintenance
30 thereof: PROVIDED, That this section shall not be construed to exempt
31 service charges which are spread on the property tax rolls and
32 collected as taxes;

33 (2) Amounts derived from the sale of commodities to persons in the
34 same public service business as the seller, for resale as such within
35 this state. This deduction is allowed only with respect to water
36 distribution, gas distribution or other public service businesses which

1 furnish water, gas or any other commodity in the performance of public
2 service businesses;

3 (3) Amounts actually paid by a taxpayer to another person taxable
4 under this chapter as the latter's portion of the consideration due for
5 services furnished jointly by both, if the total amount has been
6 credited to and appears in the gross income reported for tax by the
7 former;

8 (4) The amount of cash discount actually taken by the purchaser or
9 customer;

10 (5) The amount of bad debts, as that term is used in 26 U.S.C. Sec.
11 166, as amended or renumbered as of January 1, 2003, on which tax was
12 previously paid under this chapter;

13 (6) Amounts derived from business which the state is prohibited
14 from taxing under the Constitution of this state or the Constitution or
15 laws of the United States;

16 (7) Amounts derived from the distribution of water through an
17 irrigation system, for irrigation purposes;

18 (8) Amounts derived from the transportation of commodities from
19 points of origin in this state to final destination outside this state,
20 or from points of origin outside this state to final destination in
21 this state, with respect to which the carrier grants to the shipper the
22 privilege of stopping the shipment in transit at some point in this
23 state for the purpose of storing, manufacturing, milling, or other
24 processing, and thereafter forwards the same commodity, or its
25 equivalent, in the same or converted form, under a through freight rate
26 from point of origin to final destination; and amounts derived from the
27 transportation of commodities from points of origin in the state to an
28 export elevator, wharf, dock or ship side on tidewater or navigable
29 tributaries thereto from which such commodities are forwarded, without
30 intervening transportation, by vessel, in their original form, to
31 interstate or foreign destinations: PROVIDED, That no deduction will
32 be allowed when the point of origin and the point of delivery to such
33 an export elevator, wharf, dock, or ship side are located within the
34 corporate limits of the same city or town;

35 ~~(9) ((Amounts derived from the production, sale, or transfer of~~
36 ~~electrical energy for resale within or outside the state or for~~
37 ~~consumption outside the state;~~

1 ~~(10)~~) Amounts derived from the distribution of water by a
2 nonprofit water association and used for capital improvements by that
3 nonprofit water association;

4 ~~((11))~~ (10) Amounts paid by a sewerage collection business
5 taxable under RCW 82.16.020(1)(a) to a person taxable under chapter
6 82.04 RCW for the treatment or disposal of sewage.

7 **Sec. 12.** RCW 82.16.090 and 1988 c 228 s 1 are each amended to read
8 as follows:

9 Any customer billing issued by a ~~((light or power business or))~~ gas
10 distribution business that serves a total of more than twenty thousand
11 customers and operates within the state shall include the following
12 information:

13 (1) The rates and amounts of taxes paid directly by the customer
14 upon products or services rendered by the ~~((light and power business
15 or))~~ gas distribution business; and

16 (2) The rate, origin and approximate amount of each tax levied upon
17 the revenue of the ~~((light and power business or))~~ gas distribution
18 business and added as a component of the amount charged to the
19 customer. Taxes based upon revenue of the ~~((light and power business
20 or))~~ gas distribution business to be listed on the customer billing
21 need not include taxes levied by the federal government or taxes levied
22 under chapter ~~((s 54.28,))~~ 80.24 ~~((7))~~ or 82.04 RCW.

23 **Sec. 13.** RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended
24 to read as follows:

25 As used in this chapter:

26 (1) "Operating property" means all of the property utilized by a
27 ~~((public utility district))~~ publicly owned utility in the operation of
28 a plant or system for the generation, transmission, or distribution of
29 electric energy for sale;

30 (2) "Taxing districts" means counties, cities, towns, school
31 districts, and road districts;

32 (3) "Distributes to consumers" means the sale of electric energy to
33 ultimate consumers thereof, and does not include sales of electric
34 energy for resale by the purchaser;

35 (4) "Wholesale value" means all costs of a ~~((public utility
36 district))~~ publicly owned utility associated with the generation and

1 transmission of energy from its own generation and transmission system
2 to the point or points of inter-connection with a distribution system
3 owned and used by a ~~((district))~~ publicly owned utility to distribute
4 ~~((such))~~ energy to consumers, or in the event a distribution system
5 owned by a ~~((district))~~ publicly owned utility is not used to
6 distribute ~~((such))~~ energy, then the term means the gross revenues
7 derived by a ~~((district))~~ publicly owned utility from the sale of
8 ~~((such))~~ energy to consumers;

9 (5) "Thermal electric generating facility" means a steam-powered
10 electrical energy producing facility utilizing nuclear or fossil fuels;

11 (6) "Placed in operation" means delivery of energy into a
12 transmission or distribution system for use or sale in ~~((such))~~ a
13 manner as to establish a value accruing to the power plant operator,
14 except operation incidental to testing or startup adjustments;

15 (7) "Impacted area" for a thermal electric generating facility on
16 a federal reservation means that area in the state lying within thirty-
17 five statute miles of the most commonly used entrance of the federal
18 reservation and which is south of the southern boundary of township
19 fifteen north;

20 (8) "Publicly owned utility" means a public utility district, city,
21 or town operating a plant or system for the generation, transmission,
22 or distribution of electric energy for sale;

23 (9) "Telecommunications," "telecommunications facilities," and
24 "wholesale telecommunications services" have the same meaning as under
25 chapter 54.16 RCW.

26 **Sec. 14.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
27 read as follows:

28 "Gross revenue" ~~((shall))~~ means the amount received from the sale
29 of electric energy excluding any tax levied by a ~~((municipal~~
30 ~~corporation))~~ city or town upon the public utility district pursuant to
31 RCW 54.28.070 (as recodified by this act).

32 **Sec. 15.** RCW 54.28.020 and 1983 2nd ex.s. c 3 s 8 are each amended
33 to read as follows:

34 (1) There is ~~((hereby))~~ levied and there shall be collected from
35 every ~~((district))~~ publicly owned utility a tax for the act or
36 privilege of engaging within this state in the business of operating

1 works, plants or facilities for the generation, distribution and sale
2 of electric energy. With respect to each (~~such district~~) publicly
3 owned utility, except with respect to thermal electric generating
4 facilities taxed under RCW 54.28.025 (as recodified by this act),
5 (~~such~~) the tax shall be the sum of the following amounts: (a) Two
6 and twenty-eight one-hundredths percent of the gross revenues derived
7 by the (~~district~~) publicly owned utility from the sale of all
8 electric energy which it distributes to consumers who are served by a
9 distribution system owned by the (~~district~~) publicly owned utility;
10 (b) (~~five~~) twenty-one and fifteen one-hundredths percent of the first
11 four mills per kilowatt-hour of wholesale value of self-generated
12 energy distributed to consumers by a (~~district~~) publicly owned
13 utility; (c) (~~five~~) twenty-one and fifteen one-hundredths percent of
14 the first four mills per kilowatt-hour of revenue obtained by the
15 (~~district~~) publicly owned utility from the sale of self-generated
16 energy for resale.

17 (2) An additional tax is imposed equal to the rate specified in RCW
18 82.02.030 multiplied by the tax payable under subsection (1) of this
19 section.

20 NEW SECTION. Sec. 16. (1) There is levied and there shall be
21 collected from every publicly owned utility a tax for the act or
22 privilege of engaging within this state in the business of operating
23 works, plants, or facilities for the purposes of selling wholesale
24 telecommunications services. With respect to each such utility, such
25 tax shall be . . . percent of the wholesale value of the services sold.

26 (2) An additional tax is imposed equal to the rate specified in RCW
27 82.02.030 multiplied by the tax payable under subsection (1) of this
28 section.

29 Sec. 17. RCW 54.28.025 and 1983 2nd ex.s. c 3 s 9 are each amended
30 to read as follows:

31 (1) There is (~~hereby~~) levied and there shall be collected from
32 every (~~district~~) publicly owned utility operating a thermal electric
33 generating facility, as defined in RCW 54.28.010 (~~as now or hereafter~~
34 ~~amended~~) (as recodified by this act), having a design capacity of two
35 hundred fifty thousand kilowatts or more, located on a federal
36 reservation, which is placed in operation after September 21, 1977, a

1 tax for the act or privilege of engaging within the state in the
2 business of generating electricity for use or sale, equal to one and
3 one-half percent of wholesale value of energy produced for use or sale,
4 except energy used in the operation of component parts of the power
5 plant and associated transmission facilities under control of the
6 person operating the power plant.

7 (2) An additional tax is imposed equal to the rate specified in RCW
8 82.02.030 multiplied by the tax payable under subsection (1) of this
9 section.

10 **Sec. 18.** RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended
11 to read as follows:

12 On or before the fifteenth day of March of each year, each
13 ~~((district))~~ publicly owned utility subject to this tax shall file with
14 the department of revenue a report verified by the affidavit of its
15 manager or secretary on forms prescribed by the department of revenue.
16 ~~((Such))~~ The report shall state (1) the gross revenues derived by the
17 ~~((district))~~ publicly owned utility from the sale of all distributed
18 energy to consumers and the respective amounts derived from ~~((such))~~
19 sales within each county; (2) the gross revenues derived by the
20 ~~((district))~~ publicly owned utility from the sale of self-generated
21 energy for resale; (3) all revenue derived by the publicly owned
22 utility from the sale of wholesale telecommunications services; (4) the
23 amount of all generated energy distributed from each of the facilities
24 subject to taxation by a ~~((district))~~ publicly owned utility from its
25 own generating facilities, the wholesale value ~~((thereof))~~, and the
26 basis on which the value is computed; ~~((4))~~ (5) the total cost of all
27 generating facilities and the cost of acquisition of land and land
28 rights for ~~((such))~~ facilities or for reservoir purposes in each
29 county; (6) the total cost to build and maintain all wholesale
30 telecommunications facilities; and ~~((5) such))~~ (7) other and further
31 information as the department of revenue reasonably may require in
32 order to administer the provisions of this chapter. In case of failure
33 by a ~~((district))~~ publicly owned utility to file ~~((such))~~ a report, the
34 department may proceed to determine the information, which
35 determination shall be contestable by the ~~((district))~~ publicly owned
36 utility only for actual fraud.

1 **Sec. 19.** RCW 54.28.040 and 1996 c 149 s 16 are each amended to
2 read as follows:

3 (1) Before May 1st, the department of revenue shall compute the tax
4 imposed by this chapter for the last preceding calendar year and notify
5 the ~~((district))~~ publicly owned utility of the amount ~~((thereof))~~,
6 which shall be payable on or before the following June 1st.

7 (2) If payment of any tax is not received by the department on or
8 before the due date, there shall be assessed a penalty of five percent
9 of the amount of the tax; if the tax is not received within one month
10 of the due date, there shall be assessed a total penalty of ten percent
11 of the amount of the tax; and if the tax is not received within two
12 months of the due date, there shall be assessed a total penalty of
13 twenty percent of the amount of the tax.

14 (3) Upon receipt of the amount of each tax imposed the department
15 of revenue shall deposit the same with the state treasurer, who shall
16 deposit four percent of the revenues received under RCW 54.28.020(1)
17 ~~((and))~~, 54.28.025(1) (as recodified by this act), and section 16(1) of
18 this act, and all revenues received under RCW 54.28.020(2) ~~((and))~~,
19 54.28.025(2) (as recodified by this act), and section 16(2) of this act
20 in the general fund of the state and shall distribute the remainder
21 ~~((in the manner hereinafter))~~ as set forth in RCW 54.28.050 and
22 54.28.055 (as recodified by this act). The state treasurer shall send
23 a duplicate copy of each transmittal to the department of revenue.

24 **Sec. 20.** RCW 54.28.050 and 1982 1st ex.s. c 35 s 21 are each
25 amended to read as follows:

26 (1) After computing the tax imposed by RCW 54.28.020(1) (as
27 recodified by this act) and section 16(1) of this act and making the
28 distribution under RCW 54.28.040 (as recodified by this act), the
29 department of revenue shall instruct the state treasurer, after placing
30 thirty-seven and six-tenths percent in the state general fund to be
31 dedicated for the benefit of the public schools, to distribute the
32 balance as follows:

33 (a) For amounts collected under RCW 54.28.020(1) (a) (as recodified
34 by this act), the balance shall be distributed to each county in
35 proportion to the gross revenue from sales made within each county;
36 ~~((and to distribute the balance))~~

1 (b) For amounts collected under section 16(1) of this act, if the
2 telecommunications facilities are located in only one county, the
3 balance shall be distributed to the county in which the wholesale
4 telecommunications facilities are located. If the telecommunications
5 facilities are located in more than one county, the balance shall be
6 distributed in a pro rata manner to each applicable county based on the
7 cost of the telecommunications facilities; and

8 (c) For amounts collected under RCW 54.28.020(1) (b) and (c) (as
9 recodified by this act), the balance shall be distributed as follows:
10 If the entire generating facility, including reservoir, if any, is in
11 a single county then all of the balance to the county where ((~~such~~))
12 the generating facility is located. If any reservoir is in more than
13 one county, then to each county in which the reservoir or any portion
14 ((~~thereof~~)) is located, a percentage equal to the percentage determined
15 by dividing the total cost of the generating facilities, including
16 adjacent switching facilities, into twice the cost of land and land
17 rights acquired for any reservoir within each county, land and land
18 rights to be defined the same as used by the federal power commission.
19 If the powerhouse and dam, if any, in connection with ((~~such~~)) the
20 reservoir are in more than one county, the balance shall be divided
21 sixty percent to the county in which the owning ((~~district~~)) publicly
22 owned utility is located and forty percent to the other county or
23 counties or if ((~~said~~)) the powerhouse and dam, if any, are owned by a
24 joint operating agency organized under chapter 43.52 RCW, or by more
25 than one ((~~district~~)) publicly owned utility or are outside the county
26 of the owning ((~~district~~)) publicly owned utility, then to be divided
27 equally between the counties in which ((~~such~~)) the facilities are
28 located. If all of the powerhouse and dam, if any, are in one county,
29 then the balance shall be distributed to the county in which the
30 facilities are located.

31 (2) The provisions of this section shall not apply to the
32 distribution of taxes collected under RCW 54.28.025 (as recodified by
33 this act).

34 **Sec. 21.** RCW 54.28.055 and 1986 c 189 s 1 are each amended to read
35 as follows:

36 (1) After computing the tax imposed by RCW 54.28.025(1) (as
37 recodified by this act) and after making the distribution specified in

1 RCW 54.28.040 (as recodified by this act), the department of revenue
2 shall instruct the state treasurer to distribute the amount collected
3 as follows:

4 (a) Fifty percent to the state general fund for the support of
5 schools; and

6 (b) Twenty-two percent to the counties, twenty-three percent to the
7 cities, three percent to the fire protection districts, and two percent
8 to the library districts.

9 (2) Each county, city, fire protection district and library
10 district shall receive a percentage of the amount for distribution to
11 counties, cities, fire protection districts and library districts,
12 respectively, in the proportion that the population of ~~((such))~~ the
13 ~~((district))~~ publicly owned utility residing within the impacted area
14 bears to the total population of all ~~((such districts))~~ publicly owned
15 utilities residing within the impacted area. For the purposes of this
16 chapter, the term "library district" includes only regional libraries
17 as defined in RCW 27.12.010(4), rural county library districts as
18 defined in RCW 27.12.010(5), intercounty rural library districts as
19 defined in RCW 27.12.010(6), and island library districts as defined in
20 RCW 27.12.010(7). The population of a library district, for purposes
21 of ~~((such))~~ a distribution, shall not include any population within the
22 library district and the impact area that also is located within a city
23 or town.

24 (3) If any distribution pursuant to subsection (1)(b) of this
25 section cannot be made, then that share shall be prorated among the
26 state and remaining local districts.

27 (4) All distributions directed by this section to be made on the
28 basis of population shall be calculated in accordance with data to be
29 provided by the office of financial management.

30 **Sec. 22.** RCW 54.28.060 and 1996 c 149 s 12 are each amended to
31 read as follows:

32 Interest at the rate as computed under RCW 82.32.050(2) shall be
33 added to the tax ~~((hereby))~~ imposed from the due date until the date of
34 payment. The tax ~~((shall))~~ constitutes a debt to the state and may be
35 collected as such.

1 **Sec. 23.** RCW 54.28.070 and 1941 c 245 s 3 are each amended to read
2 as follows:

3 Any city or town in which a public utility district operates works,
4 plants, or facilities for the distribution and sale of electricity, or
5 for the sale of wholesale telecommunications services, shall have the
6 power to levy and collect from ((~~such~~)) the district a tax under this
7 section. With respect to the distribution and sale of electricity, a
8 tax may be imposed on the gross revenues derived by ((~~such~~)) the
9 district from the sale of electricity within the city or town,
10 exclusive of the revenues derived from the sale of electricity for
11 purposes of resale. ((~~Such~~)) With respect to the sale of wholesale
12 telecommunications services, a tax may be imposed under the applicable
13 authority in chapter 35.21 RCW. The tax when levied shall be a debt of
14 the district, and may be collected as such. Any ((~~such~~)) district
15 shall have the power to add the amount of ((~~such~~)) tax to the rates or
16 charges it makes for electricity ((~~so~~)) or wholesale telecommunications
17 services sold within the limits of ((~~such~~)) the city or town.

18 **Sec. 24.** RCW 54.28.080 and 1957 c 278 s 8 are each amended to read
19 as follows:

20 Whenever any public utility district acquires an operating property
21 from any private person, firm, or corporation and a portion of the
22 operating property is situated within the boundaries of any school
23 district and at the time of ((~~such~~)) acquisition there is an
24 outstanding bonded indebtedness of the school district, then the public
25 utility district shall, in addition to the tax imposed by this chapter,
26 pay directly to the school district a proportion of all subsequent
27 payments by the school district of principal and interest on ((~~said~~))
28 the bonded indebtedness, ((~~said~~)) the additional payments to be
29 computed and paid as follows: The amount of principal and interest
30 required to be paid ((~~by~~)) to the school district shall be multiplied
31 by the percentage which the assessed value of the property acquired
32 bore to the assessed value of the total property in the school district
33 at the time of ((~~such~~)) the acquisition. ((~~Such~~)) The additional
34 amounts shall be paid by the public utility district to the school
35 district not less than fifteen days prior to the date that ((~~such~~)) the
36 principal and interest payments are required to be paid by the school
37 district. In addition, any public utility district which acquires from

1 any private person, firm, or corporation an operating property situated
2 within a school district, is authorized to make voluntary payments to
3 ((such)) the school district for the use and benefit of the school
4 district.

5 **Sec. 25.** RCW 54.28.090 and 1980 c 154 s 9 are each amended to read
6 as follows:

7 The county legislative authority of each county shall direct the
8 county treasurer to deposit funds to the credit of each taxing district
9 in the county, other than school districts, according to the manner
10 they deem most equitable; except not less than an amount equal to
11 three-fourths of one percent of the gross revenues obtained by a
12 district from the sale of electric energy within any incorporated city
13 or town shall be remitted to ((such)) the city or town. Information
14 furnished by the district to the county legislative authority shall be
15 the basis for the determination of the amount to be paid to ((such))
16 cities or towns.

17 The provisions of this section shall not apply to the distribution
18 of taxes collected under RCW 54.28.025 (as recodified by this act).

19 **Sec. 26.** RCW 54.28.100 and 1957 c 278 s 11 are each amended to
20 read as follows:

21 All money((s)) received by any taxing district shall be used for
22 purposes for which state taxes may be used under the provisions of the
23 state Constitution.

24 **Sec. 27.** RCW 54.28.110 and 1957 c 278 s 13 are each amended to
25 read as follows:

26 Whenever((~~7~~ hereafter~~7~~)) property is removed from the tax rolls as
27 a result of the acquisition of operating property or the construction
28 of a generating plant by a public utility district, ((such)) the public
29 utility district may make voluntary payments to any municipal
30 corporation or other entity authorized to levy and collect taxes in an
31 amount not to exceed the amount of tax revenues being received by
32 ((such)) the municipal corporation or other entity at the time of
33 ((said)) the acquisition or ((said)) construction and which are lost by
34 ((such)) the municipal corporation or other entity as a result of the
35 acquisition of operating property or the construction of a generating

1 plant by the public utility district(~~(:—PROVIDED, That)~~). However,
2 this section shall not apply to taxing districts as defined in RCW
3 54.28.010(~~(, and: PROVIDED FURTHER, That)~~) (as recodified by this act)
4 and in the event any operating property (~~(se)~~) removed from the tax
5 rolls is dismantled or partially dismantled the payment which may be
6 paid (~~(hereunder)~~) shall be correspondingly reduced.

7 **Sec. 28.** RCW 54.28.120 and 1957 c 278 s 14 are each amended to
8 read as follows:

9 In the event any (~~(district hereafter)~~) publicly owned utility
10 purchases or otherwise acquires electric utility properties comprising
11 all or a portion of an electric generation (~~(and/or)~~) or distribution
12 system, or telecommunications properties for the purposes of providing
13 wholesale telecommunications services, from a public service company,
14 as defined in RCW 80.04.010, the total amount of privilege taxes
15 imposed under this chapter (~~(278, Laws of 1957)~~) to be paid by the
16 (~~(district)~~) publicly owned utility annually on the combined operating
17 property within each county where (~~(such)~~) the utility property is
18 located, irrespective of any other basis of levy contained in this
19 chapter, will be not less than the combined total of the ad valorem
20 taxes, based on regular levies, last levied against the electric
21 utility property constituting the system so purchased or acquired, or
22 the telecommunications properties purchased or acquired, plus the taxes
23 paid by the (~~(district)~~) publicly owned utility for the same year on
24 the revenues of other operating property in the same county under terms
25 of this chapter. If all or any portion of the property so acquired is
26 subsequently sold, or if rates charged to purchasers of electric energy
27 or wholesale telecommunications services are reduced, the amount of
28 privilege tax required under this section shall be proportionately
29 reduced.

30 NEW SECTION. **Sec. 29.** RCW 54.28.010, 54.28.011, 54.28.020,
31 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 54.28.060,
32 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and 54.28.120
33 are each recodified as a new chapter in Title 82 RCW.

34 NEW SECTION. **Sec. 30.** Section 16 of this act is added to the new
35 chapter created in section 29 of this act.

1 NEW SECTION. **Sec. 31.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 32.** Sections 13 through 30 of this act take
6 effect July 1, 2006.

7 NEW SECTION. **Sec. 33.** Sections 1 through 8 of this act constitute
8 a new chapter in Title 82 RCW.

9 NEW SECTION. **Sec. 34.** Captions used in sections 1 through 4 of
10 this act are not any part of the law.

11 NEW SECTION. **Sec. 35.** Sections 1 through 12, 33, and 34 of this
12 act take effect January 1, 2007.

--- END ---

APPENDIX 9

CHAPTER 245.

[H. B. 302.]

PUBLIC UTILITY DISTRICTS.

AN Act relating to public utility districts and the government thereof; providing for the levying, collection, distribution and expenditure of a privilege tax on public utility districts engaged in the distribution and sale of electric energy and authorizing voluntary payments by public utility districts for tax purposes; authorizing cities and towns to levy and collect a tax from public utility districts which distribute and sell electricity within the limits of such cities; prescribing the time of election and term of office of Public Utility District Commissioners; authorizing public utility districts to compensate their Commissioners and reimburse them for expenses incurred; pertaining to the determination of compensation to be paid by such districts in eminent domain proceedings; authorizing such districts to enter into group insurance contracts for their employees; validating public utility districts heretofore formed and prescribing the manner in which the existence of such districts now or hereafter formed may be challenged; amending sections 4 and 5 of chapter 1, Laws of 1931; and declaring that this act shall take effect immediately.

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

SECTION 1. The following terms used in this act shall be construed as follows: "district" means any public utility district now or hereafter organized pursuant to chapter 1, Laws of 1931; "Tax Commission" means the Tax Commission of the State of Washington; "operating property" means all of the property utilized by a district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale; "taxing districts" means counties, cities, towns, school districts and road districts of this state.

Definitions.

SEC. 2. (a) From and after May 1, 1941, there is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the operation of works, plants or facilities for the distribution and sale of electric

Privilege tax.

Rate.	energy. Such tax shall be two per cent (2%) of the gross revenues derived from the sale of electric energy within this state, exclusive of the revenues from sales of electric energy for resale, and shall be
Additional to other taxes.	in addition to any other tax to which such district is subject under existing law.
Report of district.	(b) On or before the 15th day of March, 1942, and of each year thereafter, each district subject to this tax shall file with the Tax Commission a report verified by the affidavit of its manager or secretary on forms prescribed by the Tax Commission. Such report shall state (1) the taxing districts wherein the operating property of the district is located, (2) as to the entire property and as to each such taxing district, the reproduction cost new and less depreciation of such operating property so far as that information is available from the district's existing records without taking additional inventory or procuring an engineering report or survey, (3) actual cost and general description of operating property purchased, (4) the district's gross revenues and operating expenses for each of the three calendar years last past, and (5) such other and further information as the Tax Commission reasonably may require in order to administer the provisions of this act. In case of failure by the district to file such report, the Commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. The Tax Commission shall proceed to determine the cash market value of the district's operating property as of the December 31st last past, and the percentage thereof located in each of the taxing districts.
Contents.	
Duty of Tax Commission.	
Computation of tax.	(c) Prior to August 15, the Tax Commission shall compute the tax imposed by this act for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before October 1. Upon receipt of the amount of the
Notice to district. Date payable.	

tax from the district, the Tax Commission shall deposit the same with the State Treasurer, who shall deposit four per cent (4%) thereof in the general fund of the state and transmit the remainder to the County Treasurer of each county in which any operating property of the district is located, in proportion to the value of such property located in such county, as directed by the Tax Commission. The State Treasurer shall send a duplicate copy of the letter of transmittal to the Tax Commission, and the Tax Commission shall instruct the County Treasurer or Treasurers as to the distribution of the money, as hereinafter provided.

Treasurer to deposit and transmit.

(d) Prior to the 15th day of January, 1942, and of each year thereafter, the County Treasurer of each county in which operating property of a district is located shall transmit to the Tax Commission a statement of the tax levies made on real and personal property in each taxing district of the county. The Tax Commission shall determine the amount of money which each taxing district in which operating property of the district is located would have received if the levies made for county, city, town, school district and road district purposes had been applied to the value of the district's operating property in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax" and their total for any county is referred to as the "county districts' tentative tax." The money received by the County Treasurer from the State Treasurer shall be apportioned by him among the taxing districts in which operating property of the district is located in the proportion that the particular taxing district's tentative tax bears to the county districts' tentative tax. All money received by the county shall be used exclusively for maintenance and operation of the Superior Court and Sheriff's office of the county; all money received by a city or town shall be

Duty of County Treasurers.

Statement of levies.

Tax Commission to compute tentative tax.

Apportionment by County Treasurer.

Money used for Superior Court and Sheriff.

Money used
for city fire
and police
departments.

expended exclusively for maintenance and operation of the Fire and Police Departments of the particular city or town to which the same is thus apportioned; all money received by a school district shall be expended exclusively for maintenance and operation of the public schools in the particular school district to which the same is thus apportioned; all money transmitted to the County Treasurer for road districts shall be expended exclusively for the maintenance and construction of public roads in the particular road districts to which the same is thus apportioned.

School
districts.

Road
districts.

Interest on
delinquency.

Deemed a
debt.

(e) Interest at the rate of six per cent (6%) per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the State of Washington and may be collected as such.

Districts
authorized
to pay tax.

(f) Districts are hereby authorized, from operating revenues accumulated prior to or subsequent to May 1, 1941, to make voluntary payments to the Tax Commission to be handled and distributed as is provided above for the tax herein imposed.

Cities and
towns may
levy tax.

SEC. 3. Any city or town in which a public utility district operates works, plants or facilities for the distribution and sale of electricity shall have the power to levy and collect from such district a tax on the gross revenues derived by such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale. Such tax when levied shall be a debt of the district, and may be collected as such. Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town.

Gross
revenues.

SEC. 3a. No public utility district under the powers granted it by chapter 1, Laws of 1931, to construct and maintain operating properties upon the

streets, alleys and public places within a city or town, shall construct any such properties without having first obtained the consent of the governing body of such city or town and approval of the plan and location of such construction, which shall be made under such reasonable terms as may be imposed by such city or town.

Cities to approve construction.

All operating properties of a public utility district within a city or town shall be operated and maintained subject to the power of the city or town to make regulations under its police power with respect thereto.

Subject to police power.

SEC. 4. That section 4 of chapter 1, Laws of 1931, be amended to read as follows:

Amendments.

Section 4. Within five days after such election, the Election Board of the county shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the Election Board shall so declare in its canvass of the returns of such election and such public utility district shall then be and become a municipal corporation of the State of Washington, and the name of such public utility district shall be Public Utility District No. _____ of _____ County. The powers of the public utility district shall be exercised through a commission consisting of three members, one from each of the three county commissioner districts of the county in which the public utility district is located, when the public utility district is coextensive with the limits of such county. When the public utility district comprises only a portion of the county, three commissioner districts, numbered consecutively, having approximately equal population and boundaries, following ward and precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, and one Commissioner shall be elected from each of said com-

Board to canvass vote.

Majority establishes district.

P. U. D. Commission.

Districts.

Qualification
of commis-
sioner.

missioner districts. No person shall be eligible to hold the office of Public Utility District Commissioner unless he is a qualified voter and a freeholder within such public utility district, and is and has been a resident for a period of three years, except as hereinafter provided, of the commissioner district from which he is elected.

Term of
office.

Except as in this section otherwise provided, the term of office of each Public Utility District Commissioner shall be six (6) years, such term to be computed from the first day of December following his election, and one such Commissioner shall be elected at each biennial general election for the term of six (6) years and until his successor has been elected and has qualified. All candidates shall be voted upon by the entire public utility district.

First
election.

In any public utility district hereafter formed, three (3) Public Utility District Commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such public utility district shall be formed. The Commissioner residing in commissioner district number one shall hold office for the term of six (6) years; the Commissioner residing in commissioner district number two shall hold office for the term of four (4) years; and the Commissioner residing in commissioner district number three shall hold office for the term of two (2) years. The terms of all Commissioners first to be elected as above provided shall include the time intervening between the date that the results of their election are declared in the canvass of returns thereof, and the date from which the length of their terms is computed as above specified.

Rotation of
terms of com-
missioners.

General
election.

No election of Commissioners in any public utility district, except to fill vacancies, shall be held until the biennial general election on the first Tuesday following the first Monday in November, 1942, at which time and thereafter such elections shall be held as

herein provided. At said general election, there shall be elected two (2) Public Utility District Commissioners in each public utility district, one for a term of four (4) years commencing December 1, 1942, in such commissioner district where the Public Utility District Commissioner resides whose successor, but for this act, would be elected on the second Saturday in December, 1941, and one for a term commencing on the second Monday in January, 1943, and expiring December 1, 1948, in such commissioner district where the Utility District Commissioner resides whose successor, but for this act, would be elected on the second Saturday in December, 1942; and at the general election to be held on the first Tuesday following the first Monday in November, 1944, there shall be elected one Public Utility District Commissioner for a term of six (6) years commencing December 1, 1944, in such commissioner district of each such utility district where the Commissioner resides whose successor, but for this act, would be elected on the second Saturday in December, 1943.

General election.

Commissioners.

Terms of office.

All Commissioners shall hold office until their successors shall have been elected and have qualified.

All expenses of elections for the formation of such public utility districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the public utility district, if formed. Nominations for Public Utility District Commissioners shall be by petition signed by one hundred (100) qualified electors of the public utility district to be filed in the office of the County Auditor not more than sixty (60) days, and not less than thirty (30) days prior to the day of such election: *Provided, however,* That in any public utility district having a population of less than four thousand, such nominating petition shall be signed by a number of

Expenses of election.

Nomination by petition.

Proviso.

Ten per cent
of electors.

Vacancies.

Special
election.

Quorum.

Boundaries
of commis-
sioners'
districts.

Change by
resolution
and notice.

qualified electors equaling ten per cent (10%) or more of the qualified electors of the public utility district. A vacancy in the office of Public Utility District Commissioner shall occur by death, resignation, removal, conviction of a felony, non-attendance at meetings of the Public Utility District Commission for a period of sixty (60) days unless excused by the Public Utility District Commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by the remaining Commissioners. If there should be at the same time such number of vacancies that there are not in office a majority of the full number of Commissioners fixed by law, a special election shall be called by the County Election Board upon the request of the remainder, or, that failing, by the County Election Board, such election to be held not more than forty (40) days after the occurring of such vacancies.

A majority of the persons holding the office of Public Utility District Commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of Commissioners fixed by law.

The boundaries of the Commissioners' districts shall not be changed oftener than once in four (4) years, and only when all members of the Commission are present: *Provided*, That any proposed change therein must be made by resolution and notice of the time of a public hearing thereon shall be pub-

lished for two (2) weeks prior thereto: *And provided further*, That upon a referendum petition signed by six per cent (6%) of the qualified voters of the public utility district being filed with the Clerk, the Commission shall submit such proposed change to the voters of the public utility district for their approval or rejection. The checking of said petition as to its sufficiency or insufficiency shall be governed by the provisions in this act relating thereto.

Referendum.

SEC. 5. That section 5 of chapter 1, Laws of 1931, be amended to read as follows:

Amendments.

Section 5. The term general election as used in this act shall be held and construed to mean biennial general elections at which state and county officers are elected. The Election Board of the county shall give notice of all elections held under the provisions of this act for the time and in the manner and form provided by law for city, school district and port district elections. Whenever in the judgment of the Election Board of the county an emergency exists, and such board is requested so to do by a resolution of the Public Utility District Commission, it may call a special election at any time in such public utility district, and at any such special election said board may combine, unite or divide precincts for the purpose of holding such special election, and every such special election so called shall be conducted and notice thereof given in the manner provided by law.

Definition: General election.

Duty of County Election Board.

Special election in emergency.

The chairman of the Board of County Commissioners, the County Auditor and the Prosecuting Attorney of the county in which the election is held shall constitute an Election Board for all elections held under the provisions of this act; and it shall be the duty of such board to provide polling places for holding elections under this act, to appoint the election officers, to provide their compensation, to provide ballot boxes, and ballots or voting machines,

County Election Board.

Duties of
County
Election
Board.

poll books and tally sheets, and deliver them to the election officers at the polling places, to publish and post notices of calling such elections in the manner provided by law, and to apportion to the public utility district its share of the expense of holding such election.

Election
officers.

The election officers appointed by the Election Board of the county shall conduct such elections and shall receive and deposit ballots cast thereat in a separate ballot box, and shall count said ballots and make returns thereof to the Election Board of the county, which board shall constitute a canvassing board for all elections held under the provisions of this act. The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act.

County
Board to
canvass vote.

General laws
to govern.

Commission
to certify
offices to be
filled.

Propositions.

The Public Utility District Commission shall certify to the Election Board a list of offices to be filled at any election to be held under the provisions of this act, and such commission, if it desires to submit to the voters of such public utility district any proposition for their approval or adoption, or rejection, at any election held under the provisions of this Act, shall require the secretary of such commission to certify the same to the Election Board at the time and in the manner and form now provided by law for certifying propositions to said board by the governing board of cities, towns and port districts.

Compensa-
tion for
Commis-
sioners.

Rate.

SEC. 6. Each public utility district may provide by resolution for the payment of compensation to each of its commissioners at a rate not exceeding \$10.00 for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the Commission of his own

district or meetings attended by one or more Commissioners of two or more districts called to consider business common to them. Each Public Utility District Commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his subsistence and lodging while away from his place of residence and mileage for use of personal automobile at the rate of five cents (5¢) per mile.

Expenses.

Mileage.

SEC. 7. Whenever, in any eminent domain proceeding heretofore or hereafter instituted by a public utility district or districts for the acquisition of any public utility or works, plants or facilities, a verdict has been returned, or, if the case is tried by the Court without a jury, a judgment has been entered, fixing the amount to be paid as compensation for the property taken or damaged, such verdict or judgment shall bear interest at the rate of six per cent (6%) per annum from the date of entry to the date of payment thereof, and there shall be added thereto the amount, with like interest thereon, expended for reasonable additions and betterments to and extensions of such property made between the dates last mentioned after notice of intention to make such additions, betterments and improvements and approval thereof by the Court having jurisdiction of the eminent domain proceeding: *Provided*, That there shall be offset against and deducted from such interest and the amount added thereto for additions, betterments and extensions made as aforesaid, the amount of net earnings, before allowance for depreciation, derived from such properties between such dates; and the Court, by order or decree, shall make provision for the adjustment, determination and payment of such items. In the event objection is made to the entry or the form of any decree of appropriation, the Court shall hear and rule upon such objection and thereafter payment shall be made in

Vetoed.

Vetoed. } accordance with such ruling. The provisions of this section shall apply in all cases where a decree of appropriation shall be entered after the effective date of this act.

Group insurance.

May pay premiums.

Restriction.

Proviso.

SEC. 8. Any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: *Provided*, That no contract shall be entered into for the benefit of a group of less than ten employees: *And provided further*, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum (75%) of such employees may be so insured.

Vetoed. } SEC. 9. The incorporation of each and all public utility districts in this state heretofore had or attempted under chapter 1, Laws of 1931, under which attempted incorporation an organized government, by and through persons claiming to occupy the offices of Public Utility District Commissioners, has been maintained since the date thereof, is hereby declared for all purposes legal and valid, and such public utility districts are hereby declared duly incorporated.

Limitation of action on legality of district.

SEC. 10. The existence of any public utility district now or hereafter formed under chapter 1, Laws of 1931, cannot hereafter be legally questioned by any person except the State of Washington in an appropriate Court action brought within six months from the date that the County Election Board shall have canvassed the returns of the election held on the proposition of creating such district. If the existence of a district is not challenged within the period above specified, by the filing and service of petition or complaint in the action aforesaid, the State of

Washington thereafter shall be barred forever from questioning the legal existence and validity of such district by reason of any defect in the organization thereof, and the same shall be deemed duly and regularly organized under the laws of this state.

Limitation
of action.

SEC. 11. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid.

Partial
invalidity.

SEC. 12. This act is necessary for the promotion of the public welfare, the immediate support of the state government and its existing public institutions and shall take effect immediately.

Effective
immediately.

Passed the House February 27, 1941.

Passed the Senate March 11, 1941.

Approved by the Governor March 25, 1941, with the exception of sections 7 and 9, which are vetoed.

CHAPTER 246.

[H. B. 15.]

APPROPRIATIONS FOR SECONDARY HIGHWAYS.

AN ACT relating to secondary state highways, making appropriations from the motor vehicle fund for location, right of way, improvement, construction, reconstruction, maintenance, special maintenance, emergencies, and all proper highway purposes for secondary highways, amending section 6, chapter 181, Laws of 1939 (section 6600-2b Remington's Revised Statutes), repealing section 21, chapter 181, Laws of 1939, (section 6600-25e Remington's Revised Statutes), and declaring an emergency, and that this act shall take effect April 1, 1941.

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

SECTION 1. That section 6, chapter 181, Laws of 1939 (section 6600-2b Remington's Revised Statutes), be and it is hereby amended to read as follows:

Amend-
ments.

APPENDIX 10

of Education shall call, in the month of September next following the date of the occurrence of such vacancy, a special convention to be held on the third Wednesday of October following, in the congressional district from which the member whose office was vacated was elected, at which convention a successor shall be elected to hold office for the unexpired term of the member whose office was vacated. Such special convention shall be called and the election held in the manner set forth in sections 2 and 3 of this act for the regular conventions and elections.

Special
convention.

Passed the House March 7, 1947.

Passed the Senate March 6, 1947.

Approved by the Governor March 20, 1947.

CHAPTER 259.

[S. H. B. 324.]

PUBLIC UTILITY DISTRICTS.

AN ACT relating to Public Utility Districts; providing for the levying, collection, distribution and expenditures of a privilege tax on public utility districts engaged in the generation, distribution and sale of electric energy; amending section 2, chapter 245, Laws of 1941 (sec. 11616-2, Rem. Rev. Stat.; sec. 833-53, PPC), and providing when said act shall take effect.

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

SECTION 1. Section 2, chapter 245, Laws of 1941 (sec. 11616-2, Rem. Rev. Stat.; sec. 833-53, PPC), is amended to read as follows:

Section 2. (a) From and after May 1, 1941, there is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the

Tax levy on
privilege.

Amounts.

sum of the following amounts: (i) two per cent (2%) of the gross revenues derived by said district from the sale of all "distributed energy", i. e., electric energy which it distributes to consumers but neither generates nor purchases from generating districts; (ii) five per cent (5%) of the gross revenues derived by said district from the sale of all "self generated and distributed energy", i.e., the electric energy which it distributes to customers and also generates; and (iii) five per cent (5%) of the gross revenues derived by said district from the sale of "distributed energy purchased from another generating district", i.e., electric energy which it distributes to consumers and also purchases from another district which generated the same.

Report to
Tax Com-
mission.

(b) On or before the 15th day of March, 1942, and of each year thereafter, each district subject to this tax shall file with the Tax Commission a report verified by the affidavit of its manager or secretary on forms prescribed by the Tax Commission. Such report shall state (1) the taxing districts wherein the operating property of the district is located, (2) as to the entire property and as to each such taxing district, the reproduction cost new and less depreciation of such operating property so far as that information is available from the district's existing records without taking additional inventory or procuring an engineering report or survey, (3) actual cost and general description of operating property purchased or constructed, (4) the district's separately stated gross revenues for the preceding year derived from the sale of each of the three classes of electric energy described in section 2 (a), and (5) such other and further information as the Tax Commission reasonably may require in order to administer the provisions of this act. In case of failure by a district to file such report, the Commission may proceed to determine the information,

Contents of
report.Failure to
file report.

which determination shall be contestable by the district only for actual fraud. The Tax Commission shall proceed to determine the fair cash market value of the operating property of each and all of the districts taxable hereunder as of December 31st last past, and the percentage thereof located in each of the taxing districts wherein such operating property is located.

(c) Prior to August 15, the Tax Commission shall compute the tax imposed by this act for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before October 1. Upon receipt of the amount of each tax imposed by this act the Tax Commission shall deposit the same with the State Treasurer, who shall deposit four per cent (4%) thereof in the General Fund of the state and shall distribute the remainder in the manner hereinafter set forth. The State Treasurer shall send a duplicate copy of each such letter of transmittal to the Tax Commission, and the Tax Commission shall instruct the County Treasurer or Treasurers as to the distribution of the money, as hereinafter provided.

Computation
of tax by Tax
Commission.

Notification
and payment.

Four per
cent to gen-
eral fund.

(d) Prior to the 15th day of January, 1942, and of each year thereafter, the County Treasurer of each county in which operating property of any district or districts is located shall transmit to the Tax Commission a statement of the tax levies made on real and personal property in each taxing district of the county. The Tax Commission shall determine the amount of money which each taxing district in which operating property of the district is located would have received if the levies made for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been applied to the fair cash market value of the district's operating property in the taxing district. These amounts are referred to

"Taxing dis-
trict's tenta-
tive tax."

"Aggregate taxing district's tentative tax."

"County districts' tentative tax."

herein as the "taxing district's tentative tax", their total for all the taxing districts wherein the operating property of a given district is located is referred to herein as such district's "aggregate taxing districts' tentative tax", and their total for any county is herein referred to as the "county districts' tentative tax."

With respect to each taxing district in which is located a district's generating plants or transmission lines utilized in the generation or transmission of electric energy sold to other districts, the Tax Commission shall also determine the amount of money which each such taxing district would have received if the levies made for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been applied to the fair cash market value of such generating plants and/or transmission lines in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax for generation or transmission of energy sold" and their total for any county is herein referred to as the "county district's tentative tax for generation or transmission of energy sold."

"Taxing districts tentative tax for generation or transmission of energy sold."

"County district's tentative tax for generation or transmission of energy sold."

"Contributing district."

Sixty per cent to be pooled.

Where any district generates electric energy, the whole or any part of which it sells to other districts for distribution to consumers by them, and the remainder, if any, of which it distributes itself to consumers, in such case such selling district and each such purchasing district shall be deemed a "contributing district" and, for the purpose of distribution thereof, sixty per cent (60%) of all the taxes payable by each such contributing district with respect to such electric energy so distributed to consumers shall be pooled by the Tax Commission and distributed to each of the taxing districts in which the generating plants generating such energy or the transmission lines utilized for transmitting

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such energy are located. Such taxes shall be distributed to each such taxing district in the proportion which its "taxing district's tentative tax for generation or transmission of energy sold" bears to the total of such tentative taxes for all the taxing districts sharing therein.

Distribution to taxing districts.

Proportion.

The remainder of the taxes collectible from each district hereunder shall be distributed by the Tax Commission to each taxing district in which the operating property of such district is located in the proportion that such "taxing district's tentative tax" bears to said district's "aggregate taxing district's tentative tax": *Provided, however,* That none of such remainder shall be distributed on the basis of any "taxing district's tentative tax for generation and transmission of energy sold."

Distribution of remainder.

Proportion.

After deduction therefrom of the state tax of four per cent (4%), the remainder of each such tax payment by any district shall be distributed by the State Treasurer to each county wherein the taxing districts entitled to any portion thereof are located, and shall in turn be distributed by the County Treasurer of each such county to such taxing districts as hereinabove provided. All money received by the county shall be used exclusively for maintenance and operation of the Superior Court and Sheriff's office of the county; all money received by a city or town shall be expended exclusively for maintenance and operation of the fire and police departments of the particular city or town to which the same is thus apportioned; all money received by a school district shall be expended exclusively for maintenance and operation of the public schools in the particular school district to which the same is thus apportioned; all money transmitted to the County Treasurer for road districts shall be expended exclusively for the maintenance and con-

Distribution of remainder after four per cent deduction.

Uses of money received. County.

Cities and towns.

School districts.

Road districts.

struction of public roads in the particular road districts to which the same is thus apportioned.

Interest after due date.

(e) Interest at the rate of six per cent (6%) per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the State of Washington and may be collected as such.

"Distributes to consumers."

(f) As used herein, the term "distributes to consumers" shall mean the sale of electric energy to ultimate consumers thereof, and shall not include sales of electric energy for resale by the purchaser.

Saving clause.

SEC. 2. If any section, sub-section, clause, sentence or phrase of this act be for any reason adjudged unconstitutional, such adjudication shall not invalidate the remaining portions of this act, and the legislature hereby declares that it would have enacted this act notwithstanding the omission of the portion so adjudicated invalid.

SEC. 3. This act shall take effect July 1, 1947.

Passed the House March 4, 1947.

Passed the Senate March 8, 1947.

Approved by the Governor March 20, 1947.

CHAPTER 260.

[H. B. 394.]

NEGLECTED CHILDREN.

AN ACT relating to the care of homeless, dependent and neglected children, and providing for plans and the expenditure of funds therefor, amending section 6, chapter 114, Laws of 1937 as amended by section 6, chapter 242, Laws of 1941 (sec. 9992-106, Rem. Rev. Stat.; sec. 919-11, PPC).

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

SECTION 1. Section 6, chapter 114, Laws of 1937 as amended by section 6, chapter 242, Laws of 1941 (sec. 9992-106, Rem. Rev. Stat.; sec. 919-11, PPC) is amended to read as follows:

APPENDIX 11

CHAPTER 227.

[H. B. 561.]

STATE POWER COMMISSION AND PUBLIC UTILITIES.

AN ACT relating to the conservation, development and utilization of the state's electrical resources and of facilities for the generation, transmission and distribution thereof; creating a state power commission and prescribing its powers and duties with respect to power and power facilities in the state; relating to public utility districts, authorizing such districts to join in the exercise of certain powers vested in individual districts and providing for the joint acquisition of certain utility properties; relating to privilege taxes against, and the payment of certain obligations by, public utility districts, amending section 2, chapter 245, Laws of 1941, as amended, making an appropriation, and declaring an emergency as to section 1 hereof.

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

SECTION 1. Section 2, chapter 245, Laws of 1941, as amended by section 1, chapter 259, Laws of 1947, is amended to read as follows:

Section 2. (a) From and after May 1, 1941, there is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts: (i) two per cent (2%) of the gross revenues derived by said district from the sale of all "distributed energy," i. e., electric energy which it distributes to consumers but neither generates nor purchases from generating districts; (ii) five per cent (5%) of the gross revenues derived by said district from the sale of all "self generated and distributed energy," i. e., the electric energy which it distributes to customers and also generates; and (iii) five per cent (5%) of the gross revenues derived by said district from the sale of "distributed energy purchased from another gen-

Tax levy on
privilege.

Amounts
of levy.

erating district," i. e., electric energy which it distributes to consumers and also purchases from another district which generated the same.

Report to Tax Commission.

Contents of report.

Failure to file report.

Computation of tax by Tax Commission.

(b) On or before the 15th day of March, 1942, and of each year thereafter, each district subject to this tax shall file with the Tax Commission a report verified by the affidavit of its manager or secretary on forms prescribed by the Tax Commission. Such report shall state (1) the taxing districts wherein the operating property of the district is located, (2) as to the entire property and as to each such taxing district, the reproduction cost new and less depreciation of such operating property so far as that information is available from the district's existing records without taking additional inventory or procuring an engineering report or survey, (3) actual cost and general description of operating property purchased or constructed, (4) the district's separately stated gross revenues for the preceding year derived from the sale of each of the three classes of electric energy described in section 2(a), and (5) such other and further information as the Tax Commission reasonably may require in order to administer the provisions of this act. In case of failure by a district to file such report, the Commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. The Tax Commission shall proceed to determine the fair cash market value of the operating property of each and all of the districts taxable hereunder as of December 31st last past, and the percentage thereof located in each of the taxing districts wherein such operating property is located.

(c) Prior to May 1, the Tax Commission shall compute the tax imposed by this act for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1. Upon receipt of the

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amount of each tax imposed by this act the Tax Commission shall deposit the same with the State Treasurer, who shall deposit four per cent (4%) thereof in the General Fund of the state and shall distribute the remainder in the manner hereinafter set forth. The State Treasurer shall send a duplicate copy of each such letter of transmittal to the Tax Commission, and the Tax Commission shall instruct the County Treasurer or Treasurers as to the distribution of the money, as hereinafter provided.

Notification
and pay-
ment.

Four per
cent to
General
Fund.

(d) Immediately after the computation by the Tax Commission of the tax imposed by this act, the Tax Commission shall determine the amount of money which each taxing district in which operating property of the district is located would have received if the levies made in the preceding calendar year for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been applied to the fair cash market value of the district's operating property in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax," their total for all the taxing districts wherein the operating property of a given district is located is referred to herein as such district's "aggregate taxing districts' tentative tax," and their total for any county is herein referred to as the "county districts' tentative tax."

"Taxing dis-
trict's ten-
tative tax."

"Aggregate
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With respect to each taxing district in which is located a district's generating plants or transmission lines utilized in the generation or transmission of electric energy sold to other districts, the Tax Commission shall also determine the amount of money which each such taxing district would have received if the levies made for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been

"Taxing district's tentative tax for generation or transmission of energy sold."

"County district's tentative tax for generation or transmission of energy sold."

"Contributing district."

Sixty per cent shall be pooled.

Distribution to taxing districts.

Proportion.

Distribution of remainder.

Proportion.

applied to the fair cash market value of such generating plants and/or transmission lines in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax for generation or transmission of energy sold" and their total for any county is herein referred to as the "county district's tentative tax for generation or transmission of energy sold."

Where any district generates electric energy, the whole or any part of which it sells to other districts for distribution to consumers by them, and the remainder, if any, of which it distributes itself to consumers, in such case such selling district and each such purchasing district shall be deemed a "contributing district" and, for the purpose of distribution thereof, sixty per cent (60%) of all the taxes payable by each such contributing district with respect to such electric energy so distributed to consumers shall be pooled by the Tax Commission and distributed to each of the taxing districts in which the generating plants generating such energy or the transmission lines utilized for transmitting such energy are located. Such taxes shall be distributed to each such taxing district in the proportion which its "taxing district's tentative tax for generation or transmission of energy sold" bears to the total of such tentative taxes for all the taxing districts sharing therein.

The remainder of the taxes collectible from each district hereunder shall be distributed by the Tax Commission to each taxing district in which the operating property of such district is located in the proportion that such "taxing district's tentative tax" bears to said district's "aggregate taxing district's tentative tax": *Provided, however,* That none of such remainder shall be distributed on the basis of any "taxing district's tentative tax for generation and transmission of energy sold."

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After deduction therefrom of the state tax of four per cent (4%), the remainder of each such tax payment by any district shall be distributed by the State Treasurer to each county wherein the taxing districts entitled to any portion thereof are located, and shall in turn be distributed by the County Treasurer of each such county to such taxing districts as hereinabove provided. All money received by the county shall be used exclusively for maintenance and operation of the Superior Court and Sheriff's Office of the county; all money received by a city or town shall be expended exclusively for the fire and police departments of the particular city or town to which the same is thus apportioned; all money received by a school district shall be expended exclusively for the public schools in the particular school district to which the same is thus apportioned; all money transmitted to the County Treasurer for road districts shall be expended exclusively for the maintenance and construction of public roads in the particular road districts to which the same is thus apportioned.

Distribution of remainder after four per cent deduction.

Use of money received by county.

By cities and towns.

By school districts.

By road districts.

(e) Interest at the rate of six per cent (6%) per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the State of Washington and may be collected as such.

Interest after due date.

(f) As used herein, the term "distributes to consumers" shall mean the sale of electric energy to ultimate consumers thereof, and shall not include sales of electric energy for resale by the purchaser.

"Distributes to consumers" defined.

(g) Whenever any district hereafter acquires an operating property, as defined in section 1 of this act, from any private person, firm, or corporation and a portion of such operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the

Acquiring of operating property situated within school districts with bonded indebtedness.

Additional payments by public utility district.

public utility district shall, in addition to the tax imposed by this act, pay directly to such school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in said school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than 15 days prior to the date that such principal and interest payments are required to be paid by the school district. In addition, any public utility district which hereafter acquires from any private person, firm, or corporation an operating property situated within a school district, is hereby authorized to make voluntary payments to such school district for the use and benefit of such school district.

Amount.

Date of payments.

Voluntary payments.

Joint operation of electric utility properties by districts.

SEC. 2. Any two (2) or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at the time of the passage of this act, constitutes an inter-connected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: *Provided*, That any two (2) or more districts so acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the

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power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create sub-districts.

SEC. 3. The Columbia River and its tributaries within the State of Washington and the rivers flowing from the watersheds of the Cascade and Olympic Mountains, and all other rivers and streams of the State of Washington in so far as they affect the hydroelectric power, are hereby declared to be natural resources of this state, and their development and use by the people of this state and of the United States is declared to be of public benefit. The creation and development of hydroelectric power from such rivers and streams in the interest of the people of this state and such natural resources, including the beds and waters of such rivers, the power and power sites in, upon or adjacent to the watersheds of such rivers, owned or controlled by the people of this state, or which may be recovered by or come within their ownership, possession and control shall always remain inalienable to and ownership, possession and control thereof shall always be vested in, the people of this state. The provisions of this act shall not apply to any river or stream covered by the provisions of chapter 9, Laws of 1949. As this natural resource so declared in this act is directly related with the natural resources of fisheries and game, no permit for construction for the generation of power on any of the waters mentioned in this section shall hereafter be granted by the Supervisor of Hydraulics without the concurrence of the Director of Fisheries and the Director of Game.

SEC. 4. For the purpose of effectuating the policy declared in section 3 of this act and of developing and improving the natural resources of this State of Washington and developing the hydroelectric power resources thereof, there is hereby created a corporate municipal instrumentality of the state to be

Certain rivers and streams are natural resources.

Development is of public benefit.

Ownership vested in people of state and inalienable.

Exemption.

Directors of Fisheries and Game shall concur in granting permits for developments.

Washington State Power Commission created.

Powers of Commission.

known as the "Washington State Power Commission," hereinafter referred to in this section as the "Commission," which shall be a body politic and corporate, a political subdivision of the state, exercising governmental and public powers, may sue and be sued, be perpetual in duration and having the powers and duties hereinafter enumerated, together with such other power as may be conferred upon it by law.

Members of Commission.

SEC. 5. The Commission shall consist of three (3) members appointed by the Governor, with the advice and consent of the Senate; such members of the Commission to serve at the pleasure of the Governor. In making such appointments the Governor shall give due recognition to the varying geographical sections of this state. The members of the Commission shall receive a salary of eight thousand five hundred dollars (\$8,500) per annum, and their necessary traveling and other expenses.

Salaries of members.

Expenses.

Duties of Commission.

SEC. 6. It shall be the duty of the Commission to study, analyze and explore and make reports concerning (a) the development and utilization of hydroelectric power in the state, (b) the present and potential hydroelectric resources of the state, and (c) the utilization and integration of electric facilities and requirements of the state.

Powers of Commission.

Acquisition of real and personal property.

Generate and sell electric energy.

SEC. 7. The Commission shall, and it hereby is, authorized and directed: (a) To acquire by lease, contract, purchase, condemnation or construction, and partly by any or all of such means, all real or personal property necessary to erect or purchase, condemn and operate dams, power houses, transmission lines and to acquire, construct and operate electric transmission systems, standby and auxiliary plants and facilities and to generate, produce, sell at wholesale, transmit and deliver such electric energy to qualified purchasers and, to enter into agree-

ments for interconnection and pooling with projects, plants, systems or facilities of other distributors of electric power, and specifically the Commission is authorized to enter into contracts for the purpose of transmitting, transporting, or exchanging electrical energy: *Provided*, That this Commission shall not have the power to acquire by condemnation any generating, transmission or distribution facilities from any private individual, firm or corporation or from any public body, municipality or cooperative: *Provided further*, That in the event that the Federal government should institute any condemnation proceedings against any generation or transmission facilities which are a part of an interconnected electric system within the State of Washington then and in that event this Commission shall have the prior right to acquire such facilities by condemnation proceedings which shall take precedence over any other condemnation proceedings: *Provided further*, That the Commission shall not have the power to acquire, construct or operate any dam or dams or dam sites in any stream or portion thereof in violation of the provisions of chapter 9, Laws of 1949;

(b) To cooperate with the appropriate agencies and officials of the United States government or of any department of this state to the end that any project undertaken under the authority of this act shall be consistent with and in aid of the plans of the United States or such department for the improvement of commerce and navigation, reclamation, flood control and fisheries on or along the rivers and harbors of the State of Washington and be so planned and constructed as to be adaptable to the plans of the United States or such department therefor, so that the necessary channels, locks, canals and other navigational, reclamation, flood control and fisheries facilities shall be constructed and installed

Agreements for interconnection and pooling.

Restriction as to condemnation.

Condemnation proceedings by Federal government.

Exception as to construction and acquisition of dams and dam sites.

Cooperation with United States and State departments.

by the United States or by such department in, through and as a part of such project;

Negotiations and agreements with Canada.

(c) To negotiate with the proper Canadian authorities and agencies respecting the development of the commerce and navigation on, or the construction or acquisition of, any dam, reservoir or power plant or transmission line in Canada and to plan and agree with Canadian authorities upon cooperative or independent action to the end that the use, control or disposition of any necessary facilities may be utilized and hydroelectric power for the joint or separate use of this state and Canada may be created and developed. Such negotiations and agreements shall be conducted and concluded with due regard to the position of the United States in respect to international agreements, and any such agreements as may be reached with Canadian authorities or agencies may be submitted by the Commission to Congress for its approval, if it be advised that such approval is necessary or desirable;

Congressional approval of agreements.

Approval of plans or projects.

(d) To apply to the appropriate agencies or officials of the United States government and/or the Dominion of Canada or its provinces, including the International Joint Commission, for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable;

Interstate negotiations and contracts.

(e) To negotiate and contract interstate or cooperative compacts with the appropriate agencies or officials of any state or territory or any subdivision thereof, for the purchase, construction, sale, transmission or use of any power or power facilities capable of being utilized for the use or benefit of the people of the State of Washington. In this connection, authority is specifically granted to make similar contracts with any electric company generating or distributing electrical energy either within or without the State of Washington;

(f) To negotiate or contract for the purchase, sale, transmission or use of electrical energy with any person, firm or corporation, including political subdivisions or governmental agencies of this state, any other state or of the United States, at fair and nondiscriminating rates;

Contracts for purchase, sale or transmission of electrical energy.

(g) To study and recommend to the Legislature a fair and reasonable program for payment to the state and the local subdivisions thereof for payments of taxes or payments in lieu of taxes or assessments to the end that the state and local taxing districts will not suffer great or serious damage by reason of the operation or acquisition of the properties of the Commission;

Recommendations to legislature concerning taxation.

(h) To establish the rates for the electrical energy sold or transmitted by the Commission;

Rates for electrical energy.

(i) The Commission shall choose from its own members a Chairman and the Commission shall employ a managing director of the Commission and select such employees, including engineering, marketing, operating and technical skills, as they may require for the performance of their duties, and fix their compensation.

Officers and personnel of Commission.

SEC. 8. The rights of all persons, firms, corporations and political subdivisions or operating units of any kind under existing contracts, renewals thereof or supplements thereto, with the United States, or any agency thereof, for power are hereby preserved, and such rights shall not be impaired or modified by any of the provisions of this act or any of the powers granted by this act.

Existing contracts with United States not impaired.

SEC. 9. The rates, services and practices of the Commission in respect to the power generated, transmitted or sold by it shall not be governed by the regulations of the Department of Public Utilities.

Commission not governed by Department of Public Utilities.

SEC. 10. The Commission shall have no right or power to create any mortgage lien upon its operating property or facilities or to impose any debt, nor

Mortgage liens and imposition of debts.

Existing laws as to expropriation of water not affected.

Commission qualified to make application for permits and licenses relating to water uses.

Commission not to engage in retail distribution of electrical energy.

Exception.

Commission to have power of eminent domain.

Exception.

Condemnation procedure.

to suffer or create any financial obligation upon the State of Washington or any of its subdivisions. Neither shall this act be held to modify, alter or change any existing laws relative to the use or expropriation of water or the functions, powers and duties of any agency or officer thereto appertaining: *Provided*, That the Commission shall be qualified to make applications, appropriations and filings with the Supervisor of Hydraulics of the State of Washington or the United States government and to obtain, hold and use permits and licenses for power sites, rights-of-way, water uses or other privileges in the same manner as any other qualified person or operating unit.

SEC. 11. Nothing in this act shall be construed to authorize or empower the Commission to engage in the retail distribution of electric energy: *Provided*, That the Commission may sell and deliver electric energy to consumers located adjacent to its transmission lines who may be without other means of adequate electric supply or to large users of electric energy: *Provided further*, That before such contracts are made the consent of the local political subdivision distributing electricity in the area involved is obtained.

SEC. 12. For the purpose of carrying out any or all of the powers herein granted, the Commission shall have the power of eminent domain for the acquisition of either real or personal property, used or useful in connection with the construction of facilities authorized hereunder: *Provided*, That this Commission shall not have the power of eminent domain with respect to any existing facilities for the generation or transmission of electric energy except as provided in section 7 (a) of this act. Condemnation pursuant to this act shall be under the procedure set out in chapter 64, Laws of 1891, as amended: *Provided*, That the Commission may institute con-

demnation proceedings in the Superior Court of any county in which any of the property sought to be condemned is located or in which the owner of any thereof does business, and the Court in any such action shall have jurisdiction to condemn property wherever located within the state: *Provided further*, That it shall not be necessary to allege or prove any offer to purchase or inability to agree with the the owners thereof for the purchase of any such property in said proceedings. Upon the filing of a petition for condemnation, as provided in this section, the Court may issue an order restraining the removal from the jurisdiction of the state of any personal property sought to be acquired by the proceedings during the pendency thereof. The Court shall further have the power to issue such orders or process as shall be necessary to place the Commission into possession of any property condemned.

Condemnation procedure.

Powers of Courts.

SEC. 13. For the purpose of paying the cost of acquiring by lease, contract, purchase, condemnation or construction all or any part of such electric systems and for rehabilitating, rebuilding, enlarging or improving all or any part of said system, the Commission is hereby authorized by resolution to issue its revenue bonds which shall constitute obligations only of the Commission and shall be payable solely and only from all or such part of the revenues from the operation of the system as may be provided in and by such resolution. Each such revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the revenues pledged for that purpose and that such bond does not constitute an indebtedness of the State of Washington. Such revenue bonds may bear such date or dates, may mature at such time or times as the Commission shall determine, may be in such denomination or denominations, may be in

Issuance of revenue bonds.

Bonds only obligations of Commission.

Lien on revenues.

Contents, terms and form of bonds.

such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this act as may be provided in such resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is non-negotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the Chairman of the Commission, and any interest coupons appertaining thereto shall bear the signature of the Chairman: *Provided*, That the signature of the Chairman on such coupons may be printed or lithographed facsimile signature. Pending the issuance of definitive bonds, temporary or interim bonds, certificates or receipts of any denomination and with or without coupons attached may be issued as may be provided by said resolution. All bonds issued under or by authority of this act shall be sold to the highest and best bidder after such advertising for bids as the Commission may deem proper: *Provided*, That the Commission may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as the Commission may deem most advantageous to its own interests. The purchase price of all bonds issued hereunder shall be paid to the State Treasurer, as ex officio Treasurer of the Commission, consistent with the provisions of the resolution pursuant to which such bonds have been issued or to the trustee designated in the resolution and held as a separate trust fund to be disbursed on orders of the Commission.

Negotiability.

Signatures on bonds.

Temporary bond.

Sale of bonds.

Payment of purchase price.

Separate trust fund.

In determining the amount of bonds required to be issued there may be included any expenses incurred by the Commission in connection with and

incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, interest during the estimated construction period, and for six (6) months thereafter, and a reasonable amount for working capital and prepaid insurance. The Commission is hereby empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations and conditions as may be deemed necessary with respect to the continued use and application of the income and revenues from the undertaking.

Determina-
tion of
amount of
bonds
required.

Covenants
and condi-
tions as to
application
of income
and revenues.

SEC. 14. The Commission may hold hearings, inquire into any matter relating to the business of the Commission, administer oaths and affirmations, compel by subpoena the attendance of witnesses, the production of relevant books, records, papers and accounts and order the taking of depositions in accordance with the rules and laws regulating the taking of depositions to be used in Superior Court proceedings and the Superior Court of Thurston County, upon request of the Commission, may enforce such subpoena and deposition proceedings. The Commission may adopt necessary rules or regulations of practice and procedure governing its procedure and hearings and establish a schedule of fees and costs to be paid by the parties involved.

Hearings.

Powers of
Commission.

Rules and
regulations
as to prac-
tice and
procedure.

SEC. 15. Any one feeling aggrieved by any order of the Commission may appeal to the Superior Court of Thurston County. The Attorney General shall represent the Commission at all hearings and upon the review of all of its orders or decisions.

Appeal.

Attorney
General to
represent
Commission.

SEC. 16. There is hereby appropriated to the Commission from the General Fund the sum of one hundred fifty thousand dollars (\$150,000) or so much thereof as may be necessary to carry out the provisions of this act, the same to be repaid to the Gen-

Appropriation to Com-
mission.

eral Fund as soon as the earnings from the facilities to be acquired by the Commission will permit such repayment.

Emergency.

SEC. 17. Section 1 of this act is necessary for the immediate preservation of the public peace, health and safety, and for the support of the state government and its existing public institutions and shall take effect immediately.

Passed the House March 8, 1949.

Passed the Senate March 7, 1949.

Approved by the Governor March 22, 1949.

CHAPTER 228.

[H. B. 415.]

REVENUE AND TAXATION.

AN ACT relating to revenue and taxation; amending sections 4, 5, 6, 7, 16, 19, 21, 31, 32, 35, 37, 40, 53, 82, 83, 87, 91, 92, 96, 99, 188, 189, 191, 192, 193, 202, 203, and 219 of chapter 180, Laws of 1935, as amended; repealing section 14 (a), chapter 180, Laws of 1935, as amended; adding a section 204-A to said chapter 180, Laws of 1935, as amended; and declaring an emergency and providing that this act shall take effect May 1, 1949.

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

Amendment.

SECTION 1. Section 4, chapter 180, Laws of 1935, as last amended by section 1, chapter 156, Laws of 1943, is amended to read as follows:

Business tax.

Section 4. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be 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, as follows:

Measured by gross business.

Persons included.

Extractors.

(a) Upon every person engaging within this state in business as an extractor; as to such per-

APPENDIX 12

CHAPTER 278.

[H. B. 489.]

TAXATION OF PUBLIC UTILITY DISTRICTS.

AN ACT relating to public utility districts and the taxation thereof; amending sections 1 and 3a, chapter 245, Laws of 1941, section 1, chapter 227, Laws of 1949 and RCW 54.28-.010, 54.28.020, 54.28.030, 54.28.040, 54.28.050, 54.28.060, 54.28.080, and 54.04.040; adding new sections to chapter 54.28 RCW; and declaring an emergency.

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

SECTION 1. Sections 1 and 3a, chapter 245, Laws of 1941 and section 1, chapter 227, Laws of 1949 (here tofore divided, combined and codified as RCW 54.28-.010, 54.28.020, 54.28.030, 54.28.040, 54.28.050, 54.28-.060, 54.28.080, and 54.04.040) are amended to read as set forth in sections 2 through 9 of this act.

Combination,
division and
amendment.

SEC. 2. (RCW 54.28.020) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts:

(1) Two percent of the gross revenues derived by the district from the sale of all "distributed energy," i.e., electric energy which it distributes to consumers but neither generates nor purchases from generating districts; (2) five percent of the gross revenues derived by the district from the sale of all "self generated and distributed energy," i.e., the electric energy which it distributes to customers and also generates; and (3) five percent of the gross revenues derived by the district from the sale of "distributed energy purchased from another generating district," i.e., electric energy which it distributes to consumers and also purchases from another district which generated the same.

RCW 54.28.020
amended.
Privilege taxes.
Tax imposed—
Rates.

RCW 54.28.030
amended.
Public utility
districts—Priv-
ilege taxes.
Districts' re-
port to tax
commission.

SEC. 3. (RCW 54.28.030) On or before the fifteenth day of March of each year, each district subject to this tax shall file with the tax commission a report verified by the affidavit of its manager or secretary on forms prescribed by the tax commission. Such report shall state (1) the county or counties wherein the operating property of the district is located, (2) as to the entire property and as to each county, the reproduction cost new and less depreciation of such operating property insofar as that information is available from the district's existing records without taking additional inventory or procuring an engineering report or survey, (3) actual cost and general description of operating property purchased or constructed, (4) the district's separately stated gross revenues for the preceding year derived from the sale of each of the three classes of electric energy described in RCW 54.28.020, and (5) such other and further information as the tax commission reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. The tax commission shall proceed to determine the fair cash market value of the operating property of each and all of the districts taxable hereunder as of December 31st last past, and the percentage thereof located in each of the county or counties wherein such operating property is located.

RCW 54.28.040
amended.
Tax computed
—Payment
—Disposition.

SEC. 4. (RCW 54.28.040) Prior to May 1st, the tax commission shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st. Upon receipt of the amount of each tax imposed the tax commission shall deposit the same with the state treasurer, who shall deposit four percent thereof in

the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each such letter of transmittal to the tax commission.

SEC. 5. (RCW 54.28.050) After computing the tax imposed by this chapter, the tax commission shall separately compute the values of each district's generating properties and its other operating properties used in the generation, distribution and sale of electric energy. If all the properties of a district are within one county, the tax commission shall instruct the state treasurer to remit the total amount of the tax collected from the district, less the four percent placed in the state general fund, to the county treasurer of the county in which the district operates for distribution to the taxing districts of the county as provided in this act.

RCW 54.28.050
amended.
Apportionment
of tax to taxing
districts.

If the district has operating property in more than one county, the tax commission shall instruct the state treasurer, after placing four percent in the state general fund, to distribute the balance collected under section 2, subsection (1) to each county according to the proportionate share of the district's operating property other than generating property in each county; the balance collected under section 2, subsection (2) shall be distributed to each county (a) forty percent according to the proportionate share of the district's operating property other than generating property in each county, and (b) sixty percent according to the proportionate share of the district's generating property in each county; the balance collected under section 2, subsection (3) shall be distributed to each county (a) forty percent according to the proportionate share of the purchasing district's operating property other than generating property in each county, and (b) sixty percent according to the proportionate share of the selling district's generating property in each county.

RCW 54.28.060
enacted
without
amendment.

SEC. 6. (RCW 54.28.060) Interest at the rate of six percent per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the state and may be collected as such.

RCW 54.28.010
enacted
without
amendment.

SEC. 7. (RCW 54.28.010) As used in this chapter:

"Tax commission" means the state tax commission;

"Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;

"Taxing districts" means counties, cities, towns, school districts, and road districts;

"Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser.

RCW 54.28.080
enacted
without
amendment.

SEC. 8. (RCW 54.28.080) Whenever any district acquires an operating property from any private person, firm, or corporation and a portion of the operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the public utility district shall, in addition to the tax imposed by this chapter, pay directly to the school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in the school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than fifteen days prior

to the date that such principal and interest payments are required to be paid by the school district. In addition, any public utility district which acquires from any private person, firm, or corporation an operating property situated within a school district, is authorized to make voluntary payments to such school district for the use and benefit of the school district.

SEC. 9. (RCW 54.04.040) A district shall not construct any property to be utilized by it in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale, on the streets, alleys, or public places within a city or town without the consent of the governing body of the city or town and approval of the plan and location of the construction, which shall be made under such reasonable terms as the city or town may impose. All such properties shall be maintained and operated subject to such regulations as the city or town may prescribe under its police power.

RCW 54.04.040
enacted
without
amendment.

SEC. 10. There is added to chapter 54.28 RCW, a new section to read as follows:

New section.

The county commissioners of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county according to the manner they deem most equitable; except not less than thirty-five percent of all moneys so received shall be apportioned to the school districts within the county having district properties within their limits, and not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county commissioners shall be the basis for the determination of the amount to be paid to such cities or towns.

Apportionment
of tax by
county
commissioners.

New section.

SEC. 11. There is added to chapter 54.28 RCW, a new section to read as follows:

Disposition of funds received.

All moneys received by any taxing district shall be used for purposes for which state taxes may be used under the provisions of the state constitution.

New section.

SEC. 12. There is added to chapter 54.28 RCW, a new section to read as follows:

"Gross revenue" defined.

"Gross revenue" shall mean the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.

New section.

SEC. 13. There is added to chapter 54.28 RCW, a new section to read as follows:

Voluntary payments by district to municipal corporation for revenue lost.

Whenever, hereafter, property is removed from the tax rolls as a result of the acquisition of operating property or the construction of a generating plant by a public utility district, such public utility district may make voluntary payments to any municipal corporation or other entity authorized to levy and collect taxes in an amount not to exceed the amount of tax revenues being received by such municipal corporation or other entity at the time of said acquisition or said construction and which are lost by such municipal corporation or other entity as a result of the acquisition of operating property or the construction of a generating plant by the public utility district: *Provided*, That this section shall not apply to taxing districts as defined in RCW 54.28.010, and: *Provided further*, That in the event any operating property so removed from the tax rolls is dismantled or partially dismantled the payment which may be paid hereunder shall be correspondingly reduced.

Proviso.

Proviso.

New section.

SEC. 14. There is added to chapter 54.28 RCW, a new section to read as follows:

In the event any district hereafter purchases or otherwise acquires electric utility properties com-

prising all or a portion of an electric generation and/or distribution system from a public service company, as defined in RCW 80.04.010, the total amount of privilege taxes imposed under this act to be paid by the district annually on the combined operating property within each county where such utility property is located, irrespective of any other basis of levy contained in this chapter, will be not less than the combined total of the ad valorem taxes, based on regular levies, last levied against the electric utility property constituting the system so purchased or acquired plus the taxes paid by the district for the same year on the revenues of other operating property in the same county under terms of this chapter. If all or any portion of the property so acquired is subsequently sold, or if rates charged to purchasers of electric energy are reduced, the amount of privilege tax required under this section shall be proportionately reduced.

District purchasing electric utility properties—
Formula for determining minimum privilege tax—
Same, when sale.

SEC. 15. There is added to chapter 54.28 RCW a new section to read as follows:

New section.

It is the purpose of this act that electric energy generated by a district shall be taxed but once under this act and in each instance at the point of last sale by any district.

Purpose of act.

SEC. 16. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Emergency.

Passed the House March 14, 1957.

Passed the Senate March 14, 1957.

Approved by the Governor March 26, 1957.

APPENDIX 13

transferred to the state institutional industries fund created by this act.

Payment of warrants.

SEC. 9. From and after the first day of August, 1959, all warrants drawn on the state institutional revolving account in the general fund of the state treasury and not presented for payment, shall be paid from the state institutional industries revolving fund.

Repeal.

SEC. 10. Sections 1, 3 and 4, chapter 115, Laws of 1957, section 41, chapter 7, Laws of 1921, and RCW 43.79.380, 43.79.382, 43.79.383 and 43.19.170 are each hereby repealed.

Passed the House February 14, 1959.

Passed the Senate March 12, 1959.

Approved by the Governor March 23, 1959.

CHAPTER 274.

[H. B. 286.]

PUBLIC UTILITY DISTRICTS—PRIVILEGE TAX.

AN ACT relating to public utility districts and the taxation thereof; amending section 7, chapter 278, Laws of 1957 and RCW 54.28.010; amending section 2, chapter 278, Laws of 1957 and RCW 54.28.020; amending section 3, chapter 278, Laws of 1957 and RCW 54.28.030; amending section 5, chapter 278, Laws of 1957 and RCW 54.28.050 to take effect January 1, 1960; and repealing section 15, chapter 278, Laws of 1957 and RCW 54.28.130.

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

RCW 54.28.010 amended.

SECTION 1. Section 7, chapter 278, Laws of 1957 and RCW 54.28.010 are each amended to read as follows:

Definitions.

As used in this chapter:

"Tax commission."

"Tax commission" means the state tax commission;

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“Operating property” means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;

“Operating property.”

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“Taxing districts” means counties, cities, towns, school districts, and road districts;

“Taxing districts.”

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“Distributes to consumers” means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser;

“Distributes to consumers.”

“Wholesale value” means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of interconnection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross revenues derived by a district from the sale of such energy to consumers.

“Wholesale value.”

SEC. 2. Section 2, chapter 278, Laws of 1957 and RCW 54.28.020 are each amended to read as follows:

RCW 54.28.020 amended.

ation 1957 Laws 278, n 5, effect 278,

There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts: (1) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (2) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (3) five percent of the first four mills per kilowatt-hour of revenue obtained by the dis-

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trict from the sale of self-generated energy for resale.

RCW 54.28.030 amended.

Districts' report to tax commission.

SEC. 3. Section 3, chapter 278, Laws of 1957 and RCW 54.28.030 are each amended to read as follows:

On or before the fifteenth day of March of each year, each district subject to this tax shall file with the tax commission a report verified by the affidavit of its manager or secretary on forms prescribed by the tax commission. Such report shall state (1) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; (2) the gross revenues derived by the district from the sale of self-generated energy for resale; (3) the amount of all generated energy distributed by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; (4) the total cost of all generating facilities and the cost of acquisition of land and land rights for reservoir purposes in each county, and (5) such other and further information as the tax commission reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud.

RCW 54.28.050 amended.

Apportionment of tax to taxing district.

SEC. 4. Section 5, chapter 278, Laws of 1957 and RCW 54.28.050 are each amended to read as follows:

After computing the tax imposed by this chapter, the tax commission shall instruct the state treasurer, after placing four percent in the state general fund, to distribute the balance collected under RCW 54.28.020 subsection (1) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020 subsections (2) and (3) as follows: If the entire generating facility,

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including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located.

Apportionment of tax to taxing district.

SEC. 5. Section 15, chapter 278, Laws of 1957 and RCW 54.28.130 are each repealed.

Repeal.

SEC. 6. The effective date of section 4 of this 1959 amendatory act shall be January 1, 1960.

Effective date, section 4.

Passed the House March 3, 1959.

Passed the Senate March 12, 1959.

Approved by the Governor March 23, 1959.

APPENDIX 14

known as the "Metropolitan Tract" and any land contiguous thereto, shall not sell said land or any part thereof or any improvement thereon, or lease said land or any part thereof or any improvement thereon or renew or extend any lease thereof for a term ending more than sixty years beyond midnight, (~~July 23, 1974~~) December 31, 1980. Any sale of said land or any part thereof or any improvement thereon, or any lease or renewal or extension of any lease of said land or any part thereof or any improvement thereon for a term ending more than sixty years after midnight, (~~July 23, 1974~~) December 31, 1980, made or attempted to be made by the board of regents shall be null and void unless and until the same has been approved or ratified and confirmed by legislative act.

The board of regents shall have power from time to time to lease said land, or any part thereof or any improvement thereon for a term ending not more than sixty years beyond midnight, (~~July 23, 1974~~) December 31, 1980: PROVIDED, That the board of regents shall make a full, detailed report of all leases and transactions pertaining to said land or any part thereof or any improvement thereon to each regular session of the legislature: PROVIDED FURTHER, That any and all records, books, accounts and/or agreements of any lessee or sublessee under this section, pertaining to compliance with the terms and conditions of such lease or sublease, shall be open to inspection by the board of regents and/or the ways and means committee of the senate or the appropriations committee of the house of representatives or any successor committee of either. It is not intended by this proviso that unrelated records, books, accounts and/or agreements of lessees, sublessees or related companies be open to such inspection.

NEW SECTION. Sec. 2. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House June 19, 1977.

Passed the Senate June 19, 1977.

Approved by the Governor July 14, 1977.

Filed in Office of Secretary of State July 14, 1977.

CHAPTER 366

[Substitute House Bill No. 3]

PUBLIC UTILITY DISTRICTS—PRIVILEGE TAXES—THERMAL ELECTRIC GENERATING FACILITIES

AN ACT Relating to revenue and taxation; amending section 7, chapter 278, Laws of 1957 as last amended by section 22, chapter 26, Laws of 1967 ex. sess. and RCW 54.28.010; amending section 2, chapter 278, Laws of 1957 as amended by section 2, chapter 274, Laws of 1959 and RCW 54.28.020; amending section 3, chapter 278, Laws of 1957 as last amended by section 30, chapter 278, Laws of 1975 1st ex. sess. and RCW 54.28.030; amending section 5, chapter 278, Laws of 1957 as last amended by section 32, chapter 278, Laws of 1975 1st ex. sess. and RCW 54.28.050; amending section 10, chapter 278, Laws of 1957 and RCW 54.28.090; and adding new sections to chapter 54.28 RCW.

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

Section 1. Section 7, chapter 278, Laws of 1957 as last amended by section 22, chapter 26, Laws of 1967 ex. sess. and RCW 54.28.010 are each amended to read as follows:

As used in this chapter:

~~(("Tax commission" means the department of revenue of the state of Washington;))~~

(1) "Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;

(2) "Taxing districts" means counties, cities, towns, school districts, and road districts;

(3) "Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser;

(4) "Wholesale value" means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of inter-connection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross revenues derived by a district from the sale of such energy to consumers;

(5) "Thermal electric generating facility" means a steam-powered electrical energy producing facility utilizing nuclear or fossil fuels;

(6) "Placed in operation" means delivery of energy into a transmission or distribution system for use or sale in such a manner as to establish a value accruing to the power plant operator, except operation incidental to testing or startup adjustments;

(7) "Impacted area" for a thermal electric generating facility on a federal reservation means that area in the state lying within thirty-five statute miles of the most commonly used entrance of the federal reservation and which is south of the southern boundary of township fifteen north.

Sec. 2. Section 2, chapter 278, Laws of 1957 as amended by section 2, chapter 274, Laws of 1959 and RCW 54.28.020 are each amended to read as follows:

There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under section 6 of this 1977 amendatory act, such tax shall be the sum of the following amounts: (1) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (2) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (3) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

Sec. 3. Section 3, chapter 278, Laws of 1957 as last amended by section 30, chapter 278, Laws of 1975 1st ex. sess. and RCW 54.28.030 are each amended to read as follows:

On or before the fifteenth day of March of each year, each district subject to this tax shall file with the department of revenue a report verified by the affidavit of its manager or secretary on forms prescribed by the department of revenue. Such report shall state (1) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; (2) the gross revenues derived by the district from the sale of self-generated energy for resale; (3) the amount of all generated energy distributed from each of the facilities subject to taxation by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; (4) the total cost of all generating facilities and the cost of acquisition of land and land rights for such facilities or for reservoir purposes in each county((-)); and (5) such other and further information as the department of revenue reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the department may proceed to determine the information, which determination shall be contestable by the district only for actual fraud.

Sec. 4. Section 5, chapter 278, Laws of 1957 as last amended by section 32, chapter 278, Laws of 1975 1st ex. sess. and RCW 54.28.050 are each amended to read as follows:

After computing the tax imposed by ~~((this chapter))~~ RCW 54.28.020, the department of revenue shall instruct the state treasurer, after placing four percent in the state general fund, to distribute the balance collected under RCW 54.28.020 subsection (1) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020 ~~((subsections))~~ (2) and (3) as follows: If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located.

The provisions of this section shall not apply to the distribution of taxes collected under section 6 of this 1977 amendatory act.

Sec. 5. Section 10, chapter 278, Laws of 1957 and RCW 54.28.090 are each amended to read as follows:

The county commissioners of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county according to the manner they deem most equitable; except not less than thirty-five percent of all moneys so received shall be apportioned to the school districts within the county having district properties within their limits, and not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county commissioners shall be the basis for the determination of the amount to be paid to such cities or towns.

The provisions of this section shall not apply to the distribution of taxes collected under section 6 of this 1977 amendatory act.

NEW SECTION. Sec. 6. There is added to chapter 54.28 RCW a new section to read as follows:

There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after the effective date of this 1977 amendatory act, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

NEW SECTION. Sec. 7. There is added to chapter 54.28 RCW a new section to read as follows:

(1) After computing the tax imposed by section 6 of this 1977 amendatory act, the department of revenue shall instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district and library district shall receive a percentage of the amount for distribution to counties, cities, fire protection districts and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area.

(3) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share shall be prorated among the state and remaining local districts.

(4) All distributions directed by this section to be made on the basis of population shall be calculated in accordance with data to be provided by the office of program planning and fiscal management.

Passed the House June 21, 1977.

Passed the Senate June 21, 1977.

Approved by the Governor July 14, 1977.

Filed in Office of Secretary of State July 14, 1977.

APPENDIX 15

employer contribution and the average programs under the jurisdiction of the survey shall be conducted during ducted more frequently. The sur- use in setting the amount of the e employee insurance benefit pro- shall transmit a recommendation on to the governor and the direc- n the proposed budgets submitted

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3E—FOOD TAX—ESTIMATED
REFERENCE REVIEW

ng section 5, chapter 91, Laws of 1947 as 1967 and RCW 41.16.050; amending sec- led by section 26, chapter 3, Laws of 1981 chapter 79, Laws of 1947 as last amended is. and RCW 48.14.020; amending section y section 2, chapter 366, Laws of 1977 ex. , chapter 366, Laws of 1977 ex. sess. and 278, Laws of 1957 as amended by section nd RCW 54.28.040; amending section 5, section 8, chapter 154, Laws of 1980 and 166, Laws of 1977 ex. sess. as amended by W 54.28.055; amending section 73, chap- ection 1, chapter 6, Laws of 1961 ex. sess. dded to chapter 62, Laws of 1933 ex. sess. amended by section 12, chapter 5, Laws of g section 24, chapter 62, Laws of 1933 ex. Laws of 1981 1st ex. sess. and RCW 66- s of 1975-'76 2nd ex. sess. as amended by and RCW 82.04.2901; amending section mended by section 1, chapter 8, Laws of ing section 82.08.100, chapter 15, Laws of aws of 1975 1st ex. sess. and RCW 82.08- Laws of 1961 as last amended by section RCW 82.08.150; amending section 82.08- d by section 26, chapter 5, Laws of 1981 ction 82.12.070, chapter 15, Laws of 1961 of 1975 1st ex. sess. and RCW 82.12.070; s of 1961 as last amended by section 12, W 82.16.020; amending section 82.16.030, l; amending section 82.20.010, chapter 15, g section 82.24.020, chapter 15, Laws of 172, Laws of 1981 and RCW 82.24.020; s of 1961 as last amended by section 71,

chapter 278, Laws of 1975 1st ex. sess. and RCW 82.26.020; amending section 2, chapter 98, Laws of 1980 and RCW 82.27.020; amending section 3, chapter 61, Laws of 1975-'76 2nd ex. sess. and RCW 82.29A.030; amending section 1, chapter 7, Laws of 1981 as amended by section 7, chapter 172, Laws of 1981 and RCW 82.32.045; amending section 82.44.020, chapter 15, Laws of 1961 as last amended by section 10, chapter 222, Laws of 1981 and RCW 82.44.020; amending section 82.44.110, chapter 15, Laws of 1961 as last amended by section 235, chapter 158, Laws of 1979 and RCW 82.44.110; amending section 1, chapter 87, Laws of 1972 ex. sess. as last amended by section 4, chapter 175, Laws of 1979 ex. sess. and RCW 82.44.150; amending section 28A.45.060, chapter 223, Laws of 1969 ex. sess. as amended by section 2, chapter 154, Laws of 1980 and RCW 82.45-.060; adding a new section to chapter 82.02 RCW; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; adding a new chapter to Title 43 RCW; creating new sections; repealing section 49, chapter 37, Laws of 1980, section 3, chapter 86, Laws of 1980, section 1, chapter 18, Laws of 1981 and RCW 82.08.0284; re- pealing section 76, chapter 37, Laws of 1980, section 4, chapter 86, Laws of 1980 and RCW 82.12.0278; providing effective dates; providing an expiration date; and declaring an emergency.

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

Section 1. Section 82.08.020, chapter 15, Laws of 1961 as last amended by section 1, chapter 8, Laws of 1981 2nd ex. sess. and RCW 82.08.020 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to four and one-half percent of the selling price: PRO- VIDED, That from and after the first day of December, 1981, until and in- cluding the thirtieth day of (~~June, 1983~~) April, 1982, such tax shall be levied and collected in an amount equal to five and five-tenths percent of the selling price: PROVIDED FURTHER, That from and after the first day of May, 1982, until and including the thirtieth day of June, 1983, such tax shall be levied and collected in an amount equal to the rate specified in section 31 of this 1982 act multiplied by the selling price.

(2) The tax imposed under this chapter shall apply to successive retail sales of the same property.

(3) The rate provided in this section applies to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 2. Section 3, chapter 130, Laws of 1975-'76 2nd ex. sess. as amended by section 1, chapter 324, Laws of 1977 ex. sess. and RCW 82-.04.2901 are each amended to read as follows:

From and after the first day of (~~June, 1976~~) April, 1982, until and in- cluding the thirtieth day of June, (~~(1979)~~) 1983, there is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed by the provisions of RCW 82.04.220 through 82.04.290, inclusive, an additional tax (~~(in the amount of six per- cent of)~~) equal to the rate specified in section 31 of this 1982 act multiplied by the tax payable under the provisions of RCW 82.04.220 through 82.04-.290, inclusive. To facilitate collection of this additional tax, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one- thousandth of one percent of the additional tax hereby imposed, adjusting

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund shall be credited to and form a part of the fund.

All amounts credited to the fund shall be available for making the payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

Sec. 18. Section 2, chapter 278, Laws of 1957 as last amended by section 2, chapter 366, Laws of 1977 ex. sess. and RCW 54.28.020 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: ~~((1))~~ (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; ~~((2))~~ (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; ~~((3))~~ (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

(2) An additional tax is imposed equal to the rate specified in section 31 of this 1982 act multiplied by the tax payable under subsection (1) of this section for April, 1982, through June, 1983.

Sec. 19. Section 6, chapter 366, Laws of 1977 ex. sess. and RCW 54.28.025 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after September 21, 1977, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

(2) An additional tax is imposed equal to the rate specified in section 31 of this 1982 act multiplied by the tax payable under subsection (1) of this section for April, 1982, through June, 1983.

Sec. 20. Section 4, chapter 27 chapter 278, Laws of 1975 1st amended to read as follows:

Prior to May 1st, the department posed by this chapter for the la district of the amount thereof, w lowing June 1st. Upon receipt o partment of revenue shall deposit shall deposit four percent ~~((then 54.28.020(1) and 54.28.025(1) 54.28.020(2) and 54.28.025(2))~~ distribute the remainder in the treasurer shall send a duplicate c the department of revenue.

Sec. 21. Section 5, chapter 2 tion 8, chapter 154, Laws of 19 to read as follows:

After computing the tax in ment of revenue shall instruct tl and six-tenths percent in the : benefit of the public schools, to 54.28.020 ~~((subsection))~~ (1)(a) revenue from sales made withir collected under RCW 54.28.020 the entire generating facility, in ty then all of the balance to the cated. If any reservoir is in mc which the reservoir or any port the percentage determined by d ities, including adjacent switchi land rights acquired for any r rights to be defined the same : the powerhouse and dam, if a more than one county, the ba county in which the owning dis county or counties or if said p joint operating agency organiz than one district or are outside divided equally between the cc all of the powerhouse and dam shall be distributed to the cour

The provisions of this secti collected under RCW 54.28.02

APPENDIX 16

NEW SECTION. Sec. 2. The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights. This permission is subject to applicable local regulation governing construction, size, and length of the dock. This permission may be revoked by the department upon finding of public necessity which is limited to the protection of waterward access or ingress rights of other landowners or public health and safety. The revocation may be appealed as a contested case under chapter 34.04 RCW. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law.

NEW SECTION. Sec. 3. Section 2, chapter 97, Laws of 1979 ex. sess, section 2, chapter 117, Laws of 1982, section 176, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.01.525 are each repealed.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate May 25, 1983.

Passed the House May 25, 1983.

Approved by the Governor June 13, 1983.

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

CHAPTER 3

[2nd Reengrossed Senate Bill No. 3909]

TAXES—GENERAL REVISIONS—BORDER COUNTIES—TELEPHONE
SERVICES—AIRCRAFTS—BOATS—TIMBER

AN ACT Relating to revenue and taxation; amending section 3, chapter 65, Laws of 1970 ex. sess. as amended by section 1, chapter 9, Laws of 1983 and RCW 82.04.255; amending section 82.04.290, chapter 15, Laws of 1961 as last amended by section 2, chapter 9, Laws of 1983 and RCW 82.04.290; amending section 3, chapter 9, Laws of 1983 and RCW 82.04.290; amending section 3, chapter 130, Laws of 1975-'76 2nd ex. sess. as last amended by section 4, chapter 9, Laws of 1983 and RCW 82.04.2901; reenacting and amending section 16, chapter 10, Laws of 1982 as last amended by section 4, chapter ___ (SSB 3244), Laws of 1983 1st ex. sess. and by section 4, chapter ___ (SHB 72), Laws of 1983 1st ex. sess. and RCW 82.04.260; amending section 31, chapter 35, Laws of 1982 1st ex. sess. as last amended by section 8, chapter 7, Laws of 1983 and RCW 82.02.030; amending section 14.02, chapter 79, Laws of 1947 as last amended by section 1, chapter 10, Laws of 1982 2nd ex. sess. and RCW 48.14.020; amending section 2, chapter 278, Laws of 1957 as last amended by section 18, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.020; amending section 6, chapter 366, Laws of 1977 ex. sess. as amended by section 19, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.025; amending section 24-A added to chapter 62, Laws of 1933 ex. sess. by section 3, chapter 158, Laws of 1935 as last amended by section 23, chapter 35, Laws of 1982 1st ex. sess. and RCW 66.24.210; amending section 24, chapter 62, Laws of 1933 ex. sess. as last amended by section 24, chapter 35, Laws of 1982 1st ex. sess. and RCW 66.24.290; amending section 82.08.150, chapter 15, Laws of 1961 as last amended by section 3, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.08.150; amending section 82.16.020, chapter 15, Laws of 1961 as last

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RCW 35.21.710;
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1 4, chapter ____ (SSB
HB 72), Laws of 1983
, Laws of 1982 1st ex.
CW 82.02.030; amend-
section 1, chapter 10,
1 2, chapter 278, Laws
1st ex. sess. and RCW
as amended by section
mending section 24-A
158, Laws of 1935 as
and RCW 66.24.210;
ended by section 24,
ing section 82.08.150,
Laws of 1982 1st ex.
Laws of 1961 as last

amended by section 1, chapter 5, Laws of 1982 2nd ex. sess. and RCW 82.16.020;
amending section 82.20.010, chapter 15, Laws of 1961 as amended by section 7, chapter
35, Laws of 1982 1st ex. sess. and RCW 82.20.010; amending section 82.24.020, chapter
15, Laws of 1961 as last amended by section 8, chapter 35, Laws of 1982 1st ex. sess. and
RCW 82.24.020; amending section 82.26.020, chapter 15, Laws of 1961 as last amended
by section 9, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.26.020; amending sec-
tion 2, chapter 98, Laws of 1980 as last amended by section 6, chapter 284, Laws of 1983
and RCW 82.27.020; amending section 3, chapter 61, Laws of 1975-'76 2nd ex. sess. as
amended by section 11, chapter 35, Laws of 1982 1st ex. sess. and RCW 82.29A.030;
amending section 82.44.020, chapter 15, Laws of 1961 as last amended by section 2,
chapter 14, Laws of 1982 2nd ex. sess. and RCW 82.44.020; amending section 28A.45-
.060, chapter 223, Laws of 1969 ex. sess. as last amended by section 14, chapter 35, Laws
of 1982 1st ex. sess. and RCW 82.45.060; amending section 82.48.010, chapter 15, Laws
of 1961 as last amended by section 239, chapter 158, Laws of 1979 and RCW 82.48.010
amending section 82.48.030, chapter 15, Laws of 1961 as last amended by section 3,
chapter 9, Laws of 1967 ex. sess. and RCW 82.48.030 amending section 82.32.090, chap-
ter 15, Laws of 1961 as last amended by section 32, chapter 7, Laws of 1983 and RCW
82.32.090; amending section 1, chapter 8, Laws of 1970 ex. sess. as last amended by sec-
tion 3, chapter 144, Laws of 1981 and RCW 82.04.050; amending section 82.04.060,
chapter 15, Laws of 1961 and RCW 82.04.060; amending section 82.04.190, chapter 15,
Laws of 1961 as last amended by section 2, chapter 90, Laws of 1975 1st ex. sess. and
RCW 82.04.190; amending section 82.04.460, chapter 15, Laws of 1961 as amended by
section 9, chapter 291, Laws of 1975 1st ex. sess. and RCW 82.04.460; amending section
82.04.470, chapter 15, Laws of 1961 as amended by section 43, chapter 278, Laws of
1975 1st ex. sess. and RCW 82.04.470; amending section 3, chapter 94, Laws of 1970 ex.
sess. as last amended by section 1, chapter 211, Laws of 1982 and RCW 82.14.020;
amending section 82.16.010, chapter 15, Laws of 1961 as last amended by section 1,
chapter 9, Laws of 1982 2nd ex. sess and RCW 82.16.010; amending section 6, chapter
134, Laws of 1972 ex. sess. as last amended by section 7, chapter 99, Laws of 1983 and
RCW 35.21.710; amending section 7, chapter 134, Laws of 1972 ex. sess. as amended by
section 7, chapter 144, Laws of 1981 and RCW 35A.82.050; amending section 8, chapter
144, Laws of 1981 and RCW 35.21.712; amending section 9, chapter 144, Laws of 1981
and RCW 35A.82.055; amending section 10, chapter 144, Laws of 1981 and RCW 35-
.21.714; amending section 11, chapter 144, Laws of 1981 and RCW 35A.82.060; amend-
ing section 2, chapter 49, Laws of 1982 1st ex. sess. and RCW 35.21.860; amending
section 80.04.270, chapter 14, Laws of 1961 as amended by section 5, chapter 144, Laws
of 1981 and RCW 80.04.270; amending section 82.08.020, chapter 15, Laws of 1961 as
last amended by section 6, chapter 7, Laws of 1983 and RCW 82.08.020; amending sec-
tion 9, chapter 7, Laws of 1983 and RCW 82.____; amending section 16, chapter 7,
Laws of 1983 and RCW 88.____; amending section 18, chapter 7, Laws of 1983 and
RCW 88.____; amending section 15, chapter 7, Laws of 1983 and RCW 88.____;
amending section 22, chapter 7, Laws of 1983 and RCW 88.____; amending section
84.36.080, chapter 15, Laws of 1961 as amended by section 23, chapter 7, Laws of 1983
and RCW 84.36.080; amending section 33, chapter 7, Laws of 1983 and RCW 82.32.____;
amending section 1, chapter 347, Laws of 1977 ex. sess. as last amended by section 2,
chapter 4, Laws of 1982 2nd ex. sess. and RCW 84.33.071; amending section 3, chapter
130, Laws of 1975-'76 2nd ex. sess. as last amended by section 4 of this 1983 act and
RCW 82.04.2901; amending section 82.08.020, chapter 15, Laws of 1961 as last amended
by section 41 of this 1983 act and RCW 82.08.020; amending section 1, chapter 7, Laws
of 1981 as last amended by section 27, chapter 35, Laws of 1982 1st ex. sess. and RCW
82.32.045; adding a new section to chapter 39.64 RCW; adding a new section to chapter
43.06 RCW; adding a new section to chapter 43.51 RCW; adding new sections to chapter
82.____ RCW (sections 9 through 13, chapter 7, Laws of 1983); adding new sections to
chapter 88.____ RCW (sections 14 through 22, chapter 7, Laws of 1983); adding a new
section to chapter 82.02 RCW; adding a new section to chapter 82.04 RCW; adding a
new section to chapter 82.08 RCW; adding a new section to chapter 84.09 RCW; repeal-
ing section 10, chapter 172, Laws of 1981 and RCW 82.04.265; making an appropriation;
providing effective dates; and declaring an emergency.

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

county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

(6) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums.

(7) This section shall be effective as to and shall govern the payment of all taxes due for calendar year 1982 and thereafter.

Sec. 8. Section 2, chapter 278, Laws of 1957 as last amended by section 18, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.020 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section ((for April, 1982, through June, 1983)).

Sec. 9. Section 6, chapter 366, Laws of 1977 ex. sess. as amended by section 19, chapter 35, Laws of 1982 1st ex. sess. and RCW 54.28.025 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after September 21, 1977, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section ((for April, 1982, through June, 1983)).

Sec. 10. Section 3, chapter 35, Laws of 1982 read as follows:

(1) There is hereby levied and there shall be collected from every person who sells or ships wine sold or shipped in this state subject to such taxes as prescribed by the board of wine and spirits, or by the board of wine and spirits salers. Every person shall on or before the date of such purchases during such forms as may be required pay the tax due from such person if he has previously been required to pay such payment is not paid on such purchase will be a fraction thereof. Every person shall procure such form as the board or container in the board and shall affix such container contain means of stamps, and file with the board the amount as the board requires if the person fails to pay the tax and cancel the license.

(2) ((From an additional tax specified in RCW 82.02.030 (1) of this section shall be levied on the day of the following))

Sec. 11. Section 24, chapter 35, Laws of 1982 are each amended to read as follows:

(1) Any brewer who delivers beer to a person other than the board of wine and spirits for all sales to the board as an agent