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**SUBSTITUTE HOUSE BILL 1257**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Finance (originally sponsored by Representatives DeBolt, Alexander, Pennington, Sheldon, Kessler, Poulsen, McMorris, Mielke, Van Luven, Grant, Crouse, Mastin, Doumit and Hatfield)

Read first time 03/10/97.

1 AN ACT Relating to the taxation of coal-fired thermal electric  
2 generating facilities placed in operation before July 1, 1975; amending  
3 RCW 43.79A.040 and 80.04.130; adding a new section to chapter 82.08  
4 RCW; adding a new section to chapter 82.12 RCW; adding a new section to  
5 chapter 82.16 RCW; creating new sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Thermal electric generating facilities play an important role  
9 in providing jobs for residents of the communities where such plants  
10 are located; and

11 (b) Taxes paid by thermal electric generating plants help to  
12 support schools and local and state government operations.

13 (2) It is the intent of the legislature to assist thermal electric  
14 generating facilities placed in operation before July 1, 1975, to  
15 update their air pollution control equipment and abate pollution by  
16 extending certain tax exemptions and credits so that such plants may  
17 continue to play a long-term vital economic role in the communities  
18 where they are located.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 82.08 RCW  
2 to read as follows:

3        (1) For the purposes of this section, "air pollution control  
4 facilities" mean any treatment works, control devices and disposal  
5 systems, machinery, equipment, structures, property, property  
6 improvements, and accessories, that are installed or acquired for the  
7 primary purpose of reducing, controlling, or disposing of industrial  
8 waste that, if released to the outdoor atmosphere, could cause air  
9 pollution, or that are required to meet regulatory requirements  
10 applicable to their construction, installation, or operation.

11        (2) The tax levied by RCW 82.08.020 does not apply to:

12        (a) Sales of tangible personal property to a light and power  
13 business, as defined in RCW 82.16.010, for construction or installation  
14 of air pollution control facilities at a thermal electric generation  
15 facility; or

16        (b) Sales of, cost of, or charges made for labor and services  
17 performed in respect to the construction or installation of air  
18 pollution control facilities.

19        (3) The exemption provided under this section applies only to  
20 sales, costs, or charges:

21        (a) Incurred for air pollution control facilities constructed or  
22 installed after the effective date of this act and used in a thermal  
23 electric generation facility placed in operation before July 1, 1975;

24        (b) If the air pollution control facilities are constructed or  
25 installed to meet applicable regulatory requirements established under  
26 state or federal law, including the Washington clean air act, chapter  
27 70.94 RCW; and

28        (c) For which the purchaser provides the seller with an exemption  
29 certificate, signed by the purchaser or purchaser's agent, that  
30 includes a description of items or services for which payment is made,  
31 the amount of the payment, and such additional information as the  
32 department reasonably may require.

33        (4) This section does not apply to sales of tangible personal  
34 property purchased or to sales of, costs of, or charges made for labor  
35 and services used for maintenance or repairs of pollution control  
36 equipment.

37        (5) If production of electricity at a thermal electric generating  
38 facility for any calendar year after 2002 and before 2023 falls below  
39 a twenty percent annual capacity factor for the generating facility,

1 all or a portion of the tax previously exempted under this section in  
2 respect to construction or installation of air pollution control  
3 facilities at the generating facility shall be due as follows:

4		Portion of previously
5	Year event occurs	exempted tax due
6	2003	100%
7	2004	95%
8	2005	90%
9	2006	85%
10	2007	80%
11	2008	75%
12	2009	70%
13	2010	65%
14	2011	60%
15	2012	55%
16	2013	50%
17	2014	45%
18	2015	40%
19	2016	35%
20	2017	30%
21	2018	25%
22	2019	20%
23	2020	15%
24	2021	10%
25	2022	5%
26	2023	0%

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW  
28 to read as follows:

29 (1) For the purposes of this section, "air pollution control  
30 facilities" mean any treatment works, control devices and disposal  
31 systems, machinery, equipment, structures, property, property  
32 improvements, and accessories, that are installed or acquired for the  
33 primary purpose of reducing, controlling, or disposing of industrial  
34 waste that, if released to the outdoor atmosphere, could cause air  
35 pollution, or that are required to meet regulatory requirements  
36 applicable to their construction, installation, or operation.

37 (2) The provisions of this chapter do not apply in respect to the  
38 use of air pollution control facilities installed and used by a light

1 and power business, as defined in RCW 82.16.010, in generating electric  
2 power.

3 (3) The exemption provided under this section applies only to air  
4 pollution control facilities that are:

5 (a) Constructed or installed after the effective date of this act  
6 and used in a thermal electric generation facility placed in operation  
7 before July 1, 1975; and

8 (b) Constructed or installed to meet applicable regulatory  
9 requirements established under state or federal law, including the  
10 Washington clean air act, chapter 70.94 RCW.

11 (4) This section does not apply to the use of tangible personal  
12 property for maintenance or repairs of the pollution control equipment.

13 (5) If production of electricity at a thermal electric generating  
14 facility for any calendar year after 2002 and before 2023 falls below  
15 a twenty percent annual capacity factor for the generating facility,  
16 all or a portion of the tax previously exempted under this section in  
17 respect to construction or installation of air pollution control  
18 facilities at the generating facility shall be due according to the  
19 schedule provided in section 2(5) of this act.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.16 RCW  
21 to read as follows:

22 (1) Light and power businesses engaged in the generation of  
23 electric energy at thermal electric generating facilities placed in  
24 operation before July 1, 1975, and that are subject to taxation under  
25 this chapter, shall be allowed a tax credit equal to the amount of  
26 sales and use taxes paid on coal used by the facility in generating  
27 electricity plus the amount of property taxes paid and associated with  
28 new air pollution control facilities constructed after the effective  
29 date of this act.

30 (2) The credit shall be taken against taxes due for the same  
31 calendar year in which the amounts, for which the credit is claimed,  
32 were paid on sales, use, or property taxes by the light and power  
33 business.

34 (3) A thermal electric generating facility may not claim any  
35 credits under this section until the department of ecology certifies  
36 that the thermal electric generating facility emitted no more than ten  
37 thousand tons of sulfur dioxide during the previous calendar year.

1 (4) The sulfur dioxide abatement account is created in the custody  
2 of the state treasurer. During each year after 1998, if the department  
3 of ecology certifies that a thermal electric generating facility made  
4 reasonable progress in installing sulfur dioxide pollution control  
5 equipment during the previous year, the state treasurer shall deposit  
6 in the account the portion of any public utility tax paid by the  
7 thermal electric generating facility that would be allowed as a credit  
8 under this section if the thermal electric generating facility emitted  
9 no more than ten thousand tons of sulfur dioxide during the previous  
10 calendar year.

11 (5) When a thermal electric generating facility emits no more than  
12 ten thousand tons of sulfur dioxide during a calendar year, the  
13 department of ecology shall so certify to the state treasurer by  
14 January 31 of the following year. Within thirty days of receipt of  
15 certification under this subsection, the state treasurer shall release  
16 any moneys in the sulfur dioxide abatement account to the owners of the  
17 thermal electric generating facility. No appropriation is required for  
18 release of moneys under this section.

19 (6) Any moneys in the sulfur dioxide abatement account on March 1,  
20 2005, shall be transferred to the state general fund. The sulfur  
21 dioxide abatement account shall cease to exist after March 1, 2005.

22 (7) Credits cannot be claimed under this section against taxes due  
23 in a calendar year if the thermal electric generating facility received  
24 a notice of violation for excessive sulfur dioxide emissions from a  
25 regional air pollution control authority or the department of ecology  
26 during the previous calendar year.

27 (8) Credits cannot be claimed under this section against taxes due  
28 in a calendar year if less than seventy percent of the coal consumed at  
29 the thermal electric generating facility during the previous calendar  
30 year was produced by a mine located in the same county as the facility  
31 or in a county contiguous to that county.

32 (9) For the purposes of this section, "air pollution control  
33 facilities" mean any treatment works, control devices and disposal  
34 systems, machinery, equipment, structures, property, property  
35 improvements, and accessories, that are installed or acquired for the  
36 primary purpose of reducing, controlling, or disposing of industrial  
37 waste that, if released to the outdoor atmosphere, could cause air  
38 pollution, or that are required to meet regulatory requirements  
39 applicable to their construction, installation, or operation.

1       **Sec. 5.** RCW 43.79A.040 and 1996 c 253 s 409 are each amended to  
2 read as follows:

3       (1) Money in the treasurer's trust fund may be deposited, invested  
4 and reinvested by the state treasurer in accordance with RCW 43.84.080  
5 in the same manner and to the same extent as if the money were in the  
6 state treasury.

7       (2) All income received from investment of the treasurer's trust  
8 fund shall be set aside in an account in the treasury trust fund to be  
9 known as the investment income account.

10       (3) The investment income account may be utilized for the payment  
11 of purchased banking services on behalf of treasurer's trust funds  
12 including, but not limited to, depository, safekeeping, and  
13 disbursement functions for the state treasurer or affected state  
14 agencies. The investment income account is subject in all respects to  
15 chapter 43.88 RCW, but no appropriation is required for payments to  
16 financial institutions. Payments shall occur prior to distribution of  
17 earnings set forth in subsection (4) of this section.

18       (4)(a) Monthly, the state treasurer shall distribute the earnings  
19 credited to the investment income account to the state general fund  
20 except under (b) and (c) of this subsection.

21       (b) The following accounts and funds shall receive their  
22 proportionate share of earnings based upon each account's or fund's  
23 average daily balance for the period: The agricultural local fund, the  
24 American Indian scholarship endowment fund, the Washington  
25 international exchange scholarship endowment fund, the energy account,  
26 the fair fund, the game farm alternative account, the grain inspection  
27 revolving fund, the rural rehabilitation account, ~~((and))~~ the self-  
28 insurance revolving fund, and the sulfur dioxide abatement account.  
29 However, the earnings to be distributed shall first be reduced by the  
30 allocation to the state treasurer's service fund pursuant to RCW  
31 43.08.190.

32       (c) The following accounts and funds shall receive eighty percent  
33 of their proportionate share of earnings based upon each account's or  
34 fund's average daily balance for the period: The advanced right of way  
35 revolving fund, the federal narcotics asset forfeitures account, the  
36 high occupancy vehicle account, and the local rail service assistance  
37 account.

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

4 **Sec. 6.** RCW 80.04.130 and 1993 c 311 s 1 are each amended to read  
5 as follows:

6 (1) Whenever any public service company shall file with the  
7 commission any schedule, classification, rule or regulation, the effect  
8 of which is to change any rate, charge, rental or toll theretofore  
9 charged, the commission shall have power, either upon its own motion or  
10 upon complaint, upon notice, to enter upon a hearing concerning such  
11 proposed change and the reasonableness and justness thereof, and  
12 pending such hearing and the decision thereon the commission may  
13 suspend the operation of such rate, charge, rental or toll for a period  
14 not exceeding ten months from the time the same would otherwise go into  
15 effect, and after a full hearing the commission may make such order in  
16 reference thereto as would be provided in a hearing initiated after the  
17 same had become effective. The commission shall not suspend a tariff  
18 that makes a decrease in a rate, charge, rental, or toll filed by a  
19 telecommunications company pending investigation of the fairness,  
20 justness, and reasonableness of the decrease when the filing does not  
21 contain any offsetting increase to another rate, charge, rental, or  
22 toll and the filing company agrees to not file for an increase to any  
23 rate, charge, rental, or toll to recover the revenue deficit that  
24 results from the decrease for a period of one year. The filing company  
25 shall file with any decrease sufficient information as the commission  
26 by rule may require to demonstrate the decreased rate, charge, rental,  
27 or toll is above the long run incremental cost of the service. A  
28 tariff decrease that results in a rate that is below long run  
29 incremental cost, or is contrary to commission rule or order, or the  
30 requirements of this chapter, shall be rejected for filing and returned  
31 to the company. The commission may prescribe a different rate to be  
32 effective on the prospective date stated in its final order after its  
33 investigation, if it concludes based on the record that the originally  
34 filed and effective rate is unjust, unfair, or unreasonable.

35 For the purposes of this section, tariffs for the following  
36 telecommunications services, that temporarily waive or reduce charges  
37 for existing or new subscribers for a period not to exceed sixty days

1 in order to promote the use of the services shall be considered tariffs  
2 that decrease rates, charges, rentals, or tolls:

3 (a) Custom calling service;

4 (b) Second access lines; or

5 (c) Other services the commission specifies by rule.

6 The commission may suspend any promotional tariff other than those  
7 listed in (a) through (c) of this subsection.

8 The commission may suspend the initial tariff filing of any water  
9 company removed from and later subject to commission jurisdiction  
10 because of the number of customers or the average annual gross revenue  
11 per customer provisions of RCW 80.04.010. The commission may allow  
12 temporary rates during the suspension period. These rates shall not  
13 exceed the rates charged when the company was last regulated. Upon a  
14 showing of good cause by the company, the commission may establish a  
15 different level of temporary rates.

16 (2) At any hearing involving any change in any schedule,  
17 classification, rule or regulation the effect of which is to increase  
18 any rate, charge, rental or toll theretofore charged, the burden of  
19 proof to show that such increase is just and reasonable shall be upon  
20 the public service company.

21 (3) The implementation of mandatory local measured  
22 telecommunications service is a major policy change in available  
23 telecommunications service. The commission shall not accept for filing  
24 or approve, prior to June 1, 1998, a tariff filed by a  
25 telecommunications company which imposes mandatory local measured  
26 service on any customer or class of customers, except that, upon  
27 finding that it is in the public interest, the commission may accept  
28 for filing and approve a tariff that imposes mandatory measured service  
29 for a telecommunications company's extended area service or foreign  
30 exchange service. This subsection does not apply to land, air, or  
31 marine mobile service, or to pay telephone service, or to any service  
32 which has been traditionally offered on a measured service basis.

33 (4) The implementation of Washington telephone assistance program  
34 service is a major policy change in available telecommunications  
35 service. The implementation of Washington telephone assistance program  
36 service will aid in achieving the stated goal of universal telephone  
37 service.

38 (5) If a utility claims a sales or use tax exemption on the  
39 pollution control equipment for an electrical generation facility and



1 abandons the generating facility before the pollution control equipment  
2 is fully depreciated, any tariff filing for a rate increase to recover  
3 abandonment costs for the pollution control equipment shall be  
4 considered unjust and unreasonable for the purposes of this section.

5 NEW SECTION. **Sec. 7.** The department of revenue may adopt rules to  
6 implement this act.

7 NEW SECTION. **Sec. 8.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and takes effect  
14 immediately.

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