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**SENATE BILL 5492**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators Patterson, Carlson, Regala, Fraser, Horn, Haugen, Jacobsen and Kohl-Welles

Read first time 01/24/2001. Referred to Committee on Environment, Energy & Water.

1 AN ACT Relating to providing incentives to reduce air pollution  
2 through the use of clean alternative fuel vehicles; amending RCW  
3 70.94.030, 82.36.010, and 82.36.280; reenacting and amending RCW  
4 82.36.025; adding new sections to chapter 70.94 RCW; adding new  
5 sections to chapter 82.04 RCW; adding a new section to chapter 82.08  
6 RCW; adding a new section to chapter 82.12 RCW; repealing RCW 43.19.637  
7 and 82.38.075; prescribing penalties; providing an effective date; and  
8 providing an expiration date.

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

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.94 RCW  
11 to read as follows:

12 The legislature finds that Washington state faces threats to its  
13 economic vitality, public health, and environment from the ongoing and  
14 increasing use of gasoline and diesel fuels in motor vehicles. Motor  
15 vehicle emissions from petroleum fuels account for more than half of  
16 all air pollutants and almost sixty percent of total carbon dioxide  
17 emissions in Washington. The legislature finds it is important to  
18 begin addressing the negative impacts of continued gasoline and diesel  
19 fuel use. Addressing motor vehicle emissions is further needed because

1 of the expected increases in population and vehicle miles traveled,  
2 which threaten to erode air quality gains made over the last decade.  
3 To make net progress in improving air quality, reducing the threat of  
4 climate change, and protecting public health and the environment, the  
5 legislature finds it is necessary to encourage the use of clean  
6 alternative fuel vehicles.

7 **Sec. 2.** RCW 70.94.030 and 1993 c 252 s 2 are each amended to read  
8 as follows:

9 Unless a different meaning is plainly required by the context, the  
10 following words and phrases as hereinafter used in this chapter shall  
11 have the following meanings:

12 (1) "Air contaminant" means dust, fumes, mist, smoke, other  
13 particulate matter, vapor, gas, odorous substance, or any combination  
14 thereof.

15 (2) "Air pollution" is presence in the outdoor atmosphere of one or  
16 more air contaminants in sufficient quantities and of such  
17 characteristics and duration as is, or is likely to be, injurious to  
18 human health, plant or animal life, or property, or which unreasonably  
19 interfere with enjoyment of life and property. For the purpose of this  
20 chapter, air pollution shall not include air contaminants emitted in  
21 compliance with chapter 17.21 RCW.

22 (3) "Air quality standard" means an established concentration,  
23 exposure time, and frequency of occurrence of an air contaminant or  
24 multiple contaminants in the ambient air which shall not be exceeded.

25 (4) "Ambient air" means the surrounding outside air.

26 (5) "Authority" means any air pollution control agency whose  
27 jurisdictional boundaries are coextensive with the boundaries of one or  
28 more counties.

29 (6) "Best available control technology" (BACT) means an emission  
30 limitation based on the maximum degree of reduction for each air  
31 pollutant subject to regulation under this chapter emitted from or that  
32 results from any new or modified stationary source, that the permitting  
33 authority, on a case-by-case basis, taking into account energy,  
34 environmental, and economic impacts and other costs, determines is  
35 achievable for such a source or modification through application of  
36 production processes and available methods, systems, and techniques,  
37 including fuel cleaning, clean fuels, or treatment or innovative fuel  
38 combustion techniques for control of each such a pollutant. In no

1 event shall application of "best available control technology" result  
2 in emissions of any pollutants that will exceed the emissions allowed  
3 by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they  
4 exist on July 25, 1993, or their later enactments as adopted by  
5 reference by the director by rule. Emissions from any source utilizing  
6 clean fuels, or any other means, to comply with this subsection shall  
7 not be allowed to increase above levels that would have been required  
8 under the definition of BACT as it existed prior to enactment of the  
9 (~~{federal}~~) federal clean air act amendments of 1990.

10 (7) "Best available retrofit technology" (BART) means an emission  
11 limitation based on the degree of reduction achievable through the  
12 application of the best system of continuous emission reduction for  
13 each pollutant that is emitted by an existing stationary facility. The  
14 emission limitation must be established, on a case-by-case basis,  
15 taking into consideration the technology available, the costs of  
16 compliance, the energy and nonair quality environmental impacts of  
17 compliance, any pollution control equipment in use or in existence at  
18 the source, the remaining useful life of the source, and the degree of  
19 improvement in visibility that might reasonably be anticipated to  
20 result from the use of the technology.

21 (8) "Board" means the board of directors of an authority.

22 (9) "Clean alternative fuel vehicle" means a motor vehicle, as  
23 defined in RCW 46.04.320, designed to operate exclusively on  
24 alternative fuels; or a hybrid vehicle powered by a combination of an  
25 electric motor and an engine powered by gasoline, diesel, or an  
26 alternative fuel; or a fuel cell vehicle powered by gasoline or an  
27 alternative fuel. Vehicles less than twelve thousand pounds gross  
28 vehicle weight must also meet or exceed the federal emission standards  
29 for ultralow emission vehicles. For purposes of this subsection,  
30 alternative fuels are defined as natural gas, propane, hydrogen, and  
31 electricity.

32 (10) "Control officer" means the air pollution control officer of  
33 any authority.

34 (~~{10}~~) (11) "Department" or "ecology" means the department of  
35 ecology.

36 (~~{11}~~) (12) "Emission" means a release of air contaminants into  
37 the ambient air.

38 (~~{12}~~) (13) "Emission standard" and "emission limitation" mean a  
39 requirement established under the federal clean air act or this chapter

1 that limits the quantity, rate, or concentration of emissions of air  
2 contaminants on a continuous basis, including any requirement relating  
3 to the operation or maintenance of a source to assure continuous  
4 emission reduction, and any design, equipment, work practice, or  
5 operational standard adopted under the federal clean air act or this  
6 chapter.

7 ~~((13))~~ (14) "Lowest achievable emission rate" (LAER) means for  
8 any source that rate of emissions that reflects:

9 (a) The most stringent emission limitation that is contained in the  
10 implementation plan of any state for such class or category of source,  
11 unless the owner or operator of the proposed source demonstrates that  
12 such limitations are not achievable; or

13 (b) The most stringent emission limitation that is achieved in  
14 practice by such class or category of source, whichever is more  
15 stringent.

16 In no event shall the application of this term permit a proposed  
17 new or modified source to emit any pollutant in excess of the amount  
18 allowable under applicable new source performance standards.

19 ~~((14))~~ (15) "Modification" means any physical change in, or  
20 change in the method of operation of, a stationary source that  
21 increases the amount of any air contaminant emitted by such source or  
22 that results in the emission of any air contaminant not previously  
23 emitted. The term modification shall be construed consistent with the  
24 definition of modification in Section 7411, Title 42, United States  
25 Code, and with rules implementing that section.

26 ~~((15))~~ (16) "Multicounty authority" means an authority which  
27 consists of two or more counties.

28 ~~((16))~~ (17) "New source" means (a) the construction or  
29 modification of a stationary source that increases the amount of any  
30 air contaminant emitted by such source or that results in the emission  
31 of any air contaminant not previously emitted, and (b) any other  
32 project that constitutes a new source under the federal clean air act.

33 ~~((17))~~ (18) "Permit program source" means a source required to  
34 apply for or to maintain an operating permit under RCW 70.94.161.

35 ~~((18))~~ (19) "Person" means an individual, firm, public or private  
36 corporation, association, partnership, political subdivision of the  
37 state, municipality, or governmental agency.

38 ~~((19))~~ (20) "Reasonably available control technology" (RACT)  
39 means the lowest emission limit that a particular source or source

1 category is capable of meeting by the application of control technology  
2 that is reasonably available considering technological and economic  
3 feasibility. RACT is determined on a case-by-case basis for an  
4 individual source or source category taking into account the impact of  
5 the source upon air quality, the availability of additional controls,  
6 the emission reduction to be achieved by additional controls, the  
7 impact of additional controls on air quality, and the capital and  
8 operating costs of the additional controls. RACT requirements for a  
9 source or source category shall be adopted only after notice and  
10 opportunity for comment are afforded.

11 ~~((+20))~~ (21) "Silvicultural burning" means burning of wood fiber  
12 on forest land consistent with the provisions of RCW 70.94.660.

13 ~~((+21))~~ (22) "Source" means all of the emissions units including  
14 quantifiable fugitive emissions, that are located on one or more  
15 contiguous or adjacent properties, and are under the control of the  
16 same person, or persons under common control, whose activities are  
17 ancillary to the production of a single product or functionally related  
18 group of products.

19 ~~((+22))~~ (23) "Stationary source" means any building, structure,  
20 facility, or installation that emits or may emit any air contaminant.

21 NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW  
22 to read as follows:

23 (1) Employers who are taxable under this chapter shall be allowed  
24 a credit for the purchase or lease of new clean alternative fuel  
25 vehicles as defined in RCW 70.94.030, if the vehicles are used in  
26 connection with business operations. The credit shall be based upon  
27 the following schedule:

28	VEHICLE TONNAGE	CREDIT
29	Less than 12,000 pounds gross	25 percent of cost or \$5,000,
30	vehicle weight	whichever is less
31	Over 12,000 pounds gross	25 percent of cost or \$20,000,
32	vehicle weight	whichever is less

33 (2) The credit may not exceed the amount of tax that would  
34 otherwise be due from the employer under this chapter. The maximum  
35 amount of credit under this section that may be claimed by an employer  
36 for any calendar year shall not exceed one hundred thousand dollars.

1 (3) Application for tax credit under this section may only be made  
2 in the form and manner prescribed in rules adopted by the department.

3 (4) The credit shall be taken not more than once quarterly and must  
4 be claimed by the due date of the last tax return for the calendar year  
5 in which the purchase is made.

6 (5) The department shall keep a running total of all credits  
7 granted under this section during each calendar year, and shall  
8 disallow any credits that would cause the tabulation for any calendar  
9 year to exceed two million dollars.

10 (6) Any person who knowingly makes a false statement of material  
11 fact in the application for a credit under subsection (1) of this  
12 section is guilty of a gross misdemeanor.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04 RCW  
14 to read as follows:

15 (1) Employers who are taxable under this chapter and provide  
16 financial assistance for the purchase or lease of new clean alternative  
17 fuel vehicles as defined in RCW 70.94.030 to school districts, transit  
18 agencies, and local governments shall be allowed a credit for amounts  
19 paid, if the vehicles are used for public transit. School buses are  
20 considered public transit for purposes of this section.

21 (2) The credit may not exceed the amount of tax that would  
22 otherwise be due under this chapter. The maximum amount of the credit  
23 under this section claimed by each employer for any calendar year shall  
24 not exceed two hundred thousand dollars.

25 (3) Application for tax credit under this section may only be made  
26 in the form and manner prescribed in rules adopted by the department.

27 (4) The credit shall be taken not more than once quarterly and must  
28 be claimed by the due date of the last tax return for the calendar year  
29 in which the purchase is made.

30 (5) The department shall keep a running total of all credits  
31 granted under this section during each calendar year, and shall  
32 disallow any credits that would cause the tabulation for any calendar  
33 year to exceed two million dollars.

34 (6) Any person who knowingly makes a false statement of a material  
35 fact in the application for a credit under subsection (1) of this  
36 section is guilty of a gross misdemeanor.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 82.04 RCW  
2 to read as follows:

3        (1) Employers who are taxable under this chapter shall be allowed  
4 a credit for the development of alternative fuel and electric vehicle  
5 recharging infrastructure. For purposes of this chapter, alternative  
6 fuel infrastructure means dispensing equipment for natural gas,  
7 propane, hydrogen, fuel containing a minimum of eighty-five percent  
8 ethanol, fuel containing a minimum of twenty percent biodiesel, and  
9 electric recharging stations. The credit shall be based upon the  
10 following schedule:

11        (a) Fifty percent of the costs incurred for systems open to the  
12 public not to exceed two hundred thousand dollars; and

13        (b) Twenty-five percent of the costs incurred for systems not open  
14 to the public not to exceed one hundred thousand dollars.

15        (2) The credit may not exceed the amount of tax that would  
16 otherwise be due from the employer under this chapter. The maximum  
17 amount of credit under this section that may be claimed by an employer  
18 for any calendar year shall not exceed one million dollars.

19        (3) Application for tax credit under this section may only be made  
20 in the form and manner prescribed in rules adopted by the department.

21        (4) The credit shall be taken not more than once quarterly and must  
22 be claimed by the due date of the last tax return for the calendar year  
23 in which the infrastructure is developed.

24        (5) The department shall keep a running total of all credits  
25 granted under this section during each calendar year, and shall  
26 disallow any credits that would cause the tabulation for any calendar  
27 year to exceed five million dollars.

28        (6) Any person who knowingly makes a false statement of a material  
29 fact in the application for a credit under subsection (1) of this  
30 section is guilty of a gross misdemeanor.

31        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 82.08 RCW  
32 to read as follows:

33        The tax imposed by this chapter shall not apply to the sale or  
34 lease of a new motor vehicle that meets the definition of a "clean  
35 alternative fuel vehicle" as provided in RCW 70.94.030.

36        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 82.12 RCW  
37 to read as follows:

1 The provisions of this chapter do not apply to the use of any new  
2 motor vehicle that meets the definition of a "clean alternative fuel  
3 vehicle" as provided in RCW 70.94.030.

4 **Sec. 8.** RCW 82.36.010 and 1998 c 176 s 6 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Alternative fuel" means natural gas, propane, hydrogen,  
9 electricity, fuels containing a minimum of eighty-five percent ethanol,  
10 and fuels containing a minimum of twenty percent biodiesel.

11 (2) "Blended fuel" means a mixture of motor vehicle fuel and  
12 another liquid, other than a de minimus amount of the liquid, that can  
13 be used as a fuel to propel a motor vehicle.

14 ((+2)) (3) "Bond" means a bond duly executed with a corporate  
15 surety qualified under chapter 48.28 RCW, which bond is payable to the  
16 state of Washington conditioned upon faithful performance of all  
17 requirements of this chapter, including the payment of all taxes,  
18 penalties, and other obligations arising out of this chapter.

19 ((+3)) (4) "Bulk transfer" means a transfer of motor vehicle fuel  
20 by pipeline or vessel.

21 ((+4)) (5) "Bulk transfer-terminal system" means the motor vehicle  
22 fuel distribution system consisting of refineries, pipelines, vessels,  
23 and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or  
24 terminal is in the bulk transfer-terminal system. Motor vehicle fuel  
25 in the fuel tank of an engine, motor vehicle, or in a railcar, trailer,  
26 truck, or other equipment suitable for ground transportation is not in  
27 the bulk transfer-terminal system.

28 ((+5)) (6) "Dealer" means a person engaged in the retail sale of  
29 motor vehicle fuel.

30 ((+6)) (7) "Department" means the department of licensing.

31 ((+7)) (8) "Director" means the director of licensing.

32 ((+8)) (9) "Evasion" or "evade" means to diminish or avoid the  
33 computation, assessment, or payment of authorized taxes or fees  
34 through:

35 (a) A knowing: False statement; misrepresentation of fact; or  
36 other act of deception; or

37 (b) An intentional: Omission; failure to file a return or report;  
38 or other act of deception.



1       (~~(9)~~) (10) "Export" means to obtain motor vehicle fuel in this  
2 state for sales or distribution outside the state.

3       (~~(10)~~) (11) "Highway" means every way or place open to the use of  
4 the public, as a matter of right, for the purpose of vehicular travel.

5       (~~(11)~~) (12) "Import" means to bring motor vehicle fuel into this  
6 state by a means of conveyance other than the fuel supply tank of a  
7 motor vehicle.

8       (~~(12)~~) (13) "Licensee" means a person holding a license issued  
9 under this chapter.

10       (~~(13)~~) (14) "Marine fuel dealer" means a person engaged in the  
11 retail sale of motor vehicle fuel whose place of business and/or sale  
12 outlet is located upon a navigable waterway.

13       (~~(14)~~) (15) "Motor vehicle fuel blender" means a person who  
14 produces blended motor fuel outside the bulk transfer-terminal system.

15       (~~(15)~~) (16) "Motor vehicle fuel distributor" means a person who  
16 acquires motor vehicle fuel from a supplier, distributor, or licensee  
17 for subsequent sale and distribution.

18       (~~(16)~~) (17) "Motor vehicle fuel exporter" means a person who  
19 purchases motor vehicle fuel in this state and directly exports the  
20 fuel by a means other than the bulk transfer-terminal system to a  
21 destination outside of the state. If the exporter of record is acting  
22 as an agent, the person for whom the agent is acting is the exporter.  
23 If there is no exporter of record, the owner of the motor fuel at the  
24 time of exportation is the exporter.

25       (~~(17)~~) (18) "Motor vehicle fuel importer" means a person who  
26 imports motor vehicle fuel into the state by a means other than the  
27 bulk transfer-terminal system. If the importer of record is acting as  
28 an agent, the person for whom the agent is acting is the importer. If  
29 there is no importer of record, the owner of the motor vehicle fuel at  
30 the time of importation is the importer.

31       (~~(18)~~) (19) "Motor vehicle fuel supplier" means a person who owns  
32 and stores motor vehicle fuel in a terminal facility or who refines and  
33 stores motor vehicle fuel at a refinery.

34       (~~(19)~~) (20) "Motor vehicle" means a self-propelled vehicle  
35 designed for operation upon land utilizing motor vehicle fuel as the  
36 means of propulsion.

37       (~~(20)~~) (21) "Motor vehicle fuel" means gasoline and any other  
38 inflammable gas or liquid, by whatsoever name the gasoline, gas, or

1 liquid may be known or sold, the chief use of which is as fuel for the  
2 propulsion of motor vehicles or motorboats.

3 ~~((21))~~ (22) "Person" means a natural person, fiduciary,  
4 association, or corporation. The term "person" as applied to an  
5 association means and includes the partners or members thereof, and as  
6 applied to corporations, the officers thereof.

7 ~~((22))~~ (23) "Position holder" means a person who holds the  
8 inventory position in motor vehicle fuel, as reflected by the records  
9 of the terminal operator. A person holds the inventory position in  
10 motor vehicle fuel if the person has a contractual agreement with the  
11 terminal for the use of storage facilities and terminating services at  
12 a terminal with respect to motor vehicle fuel. "Position holder"  
13 includes a terminal operator that owns motor vehicle fuel in their  
14 terminal.

15 ~~((23))~~ (24) "Rack" means a mechanism for delivering motor vehicle  
16 fuel from a refinery or terminal into a truck, trailer, railcar, or  
17 other means of nonbulk transfer.

18 ~~((24))~~ (25) "Refiner" means a person who owns, operates, or  
19 otherwise controls a refinery.

20 ~~((25))~~ (26) "Removal" means a physical transfer of motor vehicle  
21 fuel other than by evaporation, loss, or destruction.

22 ~~((26))~~ (27) "Terminal" means a motor vehicle fuel storage and  
23 distribution facility that has been assigned a terminal control number  
24 by the internal revenue service, is supplied by pipeline or vessel, and  
25 from which reportable motor vehicle fuel is removed at a rack.

26 ~~((27))~~ (28) "Terminal operator" means a person who owns,  
27 operates, or otherwise controls a terminal.

28 ~~((28))~~ (29) "Two-party exchange" or "buy-sell agreement" means a  
29 transaction in which taxable motor vehicle fuel is transferred from one  
30 licensed supplier to another licensed supplier under an exchange or  
31 buy-sell agreement whereby the supplier that is the position holder  
32 agrees to deliver taxable motor vehicle fuel to the other supplier or  
33 the other supplier's customer at the rack of the terminal at which the  
34 delivering supplier is the position holder.

35 **Sec. 9.** RCW 82.36.025 and 1999 c 269 s 16 and 1999 c 94 s 29 are  
36 each reenacted and amended to read as follows:

37 A motor vehicle fuel tax rate of twenty-three cents per gallon  
38 shall apply to the sale, distribution, or use of motor vehicle fuel,

1 except for alternative fuel. A tax rate of eleven and one-half cents  
2 per gallon shall apply to the sale, distribution, or use of alternative  
3 fuel.

4 **Sec. 10.** RCW 82.36.280 and 1998 c 176 s 36 are each amended to  
5 read as follows:

6 Any person who uses any motor vehicle fuel or alternative fuel for  
7 the purpose of operating any internal combustion engine not used on or  
8 in conjunction with any motor vehicle licensed to be operated over and  
9 along any of the public highways, and as the motive power thereof, upon  
10 which motor vehicle fuel excise tax has been paid, shall be entitled to  
11 and shall receive a refund of the amount of the motor vehicle fuel  
12 excise tax paid on each gallon of motor vehicle fuel so used, whether  
13 such motor vehicle excise tax has been paid either directly to the  
14 vendor from whom the motor vehicle fuel was purchased or indirectly by  
15 adding the amount of such excise tax to the price of such fuel. No  
16 refund shall be made for motor vehicle fuel consumed by any motor  
17 vehicle as herein defined that is required to be registered and  
18 licensed as provided in chapter 46.16 RCW; and is operated over and  
19 along any public highway except that a refund shall be allowed for  
20 motor vehicle fuel consumed:

21 (1) In a motor vehicle owned by the United States that is operated  
22 off the public highways for official use;

23 (2) By auxiliary equipment not used for motive power, provided such  
24 consumption is accurately measured by a metering device that has been  
25 specifically approved by the department or is established by either of  
26 the following formulae:

27 (a) For fuel used in pumping fuel or heating oils by a power take-  
28 off unit on a delivery truck, refund shall be allowed claimant for tax  
29 paid on fuel purchased at the rate of three-fourths of one gallon for  
30 each one thousand gallons of fuel delivered: PROVIDED, That claimant  
31 when presenting his or her claim to the department in accordance with  
32 the provisions of this chapter, shall provide to said claim, invoices  
33 of fuel oil delivered, or such other appropriate information as may be  
34 required by the department to substantiate his or her claim; or

35 (b) For fuel used in operating a power take-off unit on a cement  
36 mixer truck or load compactor on a garbage truck, claimant shall be  
37 allowed a refund of twenty-five percent of the tax paid on all fuel  
38 used in such a truck; and

1 (c) The department is authorized to establish by rule additional  
2 formulae for determining fuel usage when operating other types of  
3 equipment by means of power take-off units when direct measurement of  
4 the fuel used is not feasible. The department is also authorized to  
5 adopt rules regarding the usage of on board computers for the  
6 production of records required by this chapter.

7 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.94 RCW  
8 to read as follows:

9 The Washington State University energy program, in consultation  
10 with the departments of ecology, revenue, and licensing; local  
11 governments; vehicle manufacturers and suppliers; and other interested  
12 parties shall collect and review the relevant data associated with the  
13 provisions of chapter . . . , Laws of 2001 (this act) and evaluate the  
14 effectiveness of these incentives in improving air quality and  
15 increasing the use of clean alternative fuel vehicles. The Washington  
16 State University energy program shall present its findings and make  
17 recommendations as appropriate to the legislature biannually on or  
18 before December 15th, beginning in 2004.

19 NEW SECTION. **Sec. 12.** The following acts or parts of acts are  
20 each repealed:

21 (1) RCW 43.19.637 (Clean-fuel vehicles--Purchasing requirements)  
22 and 1991 c 199 s 213; and

23 (2) RCW 82.38.075 (Natural gas, propane--Annual license fee in lieu  
24 of special fuel tax for use in motor vehicles--Schedule--Decal or other  
25 identifying device) and 1983 c 212 s 1, 1981 c 129 s 1, 1979 c 48 s 1,  
26 & 1977 ex.s. c 335 s 1.

27 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2002.

28 NEW SECTION. **Sec. 14.** This act expires December 31, 2009.

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