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SENATE BILL 5386

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State of Washington

60th Legislature

2007 Regular Session

By Senators Prentice, Zarelli, Rasmussen, Schoesler, Pridemore, Pflug, Tom, Holmquist, Regala, Parlette, Shin, Morton, Swecker, Murray, Brandland, Kohl-Welles, Honeyford, Hatfield, Delvin, Jacobsen, Fraser, Sheldon and Kilmer

Read first time 01/18/2007. Referred to Committee on Ways & Means.

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

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

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

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

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

1 (b) Installs, repairs, cleans, alters, imprints, improves,  
2 constructs, or decorates real or personal property of or for consumers,  
3 if such tangible personal property becomes an ingredient or component  
4 of such real or personal property without intervening use by such  
5 person; or

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

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

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

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

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

36 (a) The installing, repairing, cleaning, altering, imprinting, or  
37 improving of tangible personal property of or for consumers, including  
38 charges made for the mere use of facilities in respect thereto, but

1 excluding charges made for the use of self-service laundry facilities,  
2 and also excluding sales of laundry service to nonprofit health care  
3 facilities, and excluding services rendered in respect to live animals,  
4 birds and insects;

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

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

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

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

36 (f) The sale of and charge made for the furnishing of lodging and  
37 all other services by a hotel, rooming house, tourist court, motel,  
38 trailer camp, and the granting of any similar license to use real

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

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

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

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

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

28 (c) Credit bureau services;

29 (d) Automobile parking and storage garage services;

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

35 (f) Service charges associated with tickets to professional  
36 sporting events; and

37 (g) The following personal services: Physical fitness services,

1 tanning salon services, tattoo parlor services, steam bath services,  
2 turkish bath services, escort services, and dating services.

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

4 (i) The renting or leasing of tangible personal property to  
5 consumers; and

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

12 (b) The term (~~shall~~) must not include the renting or leasing of  
13 tangible personal property where the lease or rental is for the purpose  
14 of sublease or subrent.

15 (5) The term (~~shall~~) must also include the providing of telephone  
16 service, as defined in RCW 82.04.065, to consumers.

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

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

36 (8) The term (~~shall~~) must not include the sale of or charge made  
37 for labor and services rendered in respect to the building, repairing,  
38 or improving of any street, place, road, highway, easement, right of

1 way, mass public transportation terminal or parking facility, bridge,  
2 tunnel, or trestle which is owned by a municipal corporation or  
3 political subdivision of the state or by the United States and which is  
4 used or to be used primarily for foot or vehicular traffic including  
5 mass transportation vehicles of any kind.

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

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

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

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

37 (11) The term (~~shall~~) must not include the sale of or charge made  
38 for labor, services, or tangible personal property pursuant to

1 agreements providing maintenance services for bus, rail, or rail fixed  
2 guideway equipment when a regional transit authority is the recipient  
3 of the labor, services, or tangible personal property, and a transit  
4 agency, as defined in RCW 81.104.015, performs the labor or services.

5 (12) Until July 1, 2012, the term must not include the sale of or  
6 charge made for labor and services rendered for environmental remedial  
7 action, as defined in section 3 of this act.

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

10 "Consumer" means the following:

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

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

1 resale in the regular course of business; (c) any person who purchases,  
2 acquires, or uses any service defined in RCW 82.04.050(2)(a), other  
3 than for resale in the regular course of business or for the purpose of  
4 satisfying the person's obligations under an extended warranty as  
5 defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or  
6 uses any amusement and recreation service defined in RCW  
7 82.04.050(3)(a), other than for resale in the regular course of  
8 business; (e) any person who is an end user of software; and (f) any  
9 person who purchases or acquires an extended warranty as defined in RCW  
10 82.04.050(7) other than for resale in the regular course of business;

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

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

37 (5) Any person who is an owner, lessee, or has the right of



1 possession to personal property which is being constructed, repaired,  
2 improved, cleaned, imprinted, or otherwise altered by a person engaged  
3 in business;

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

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

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

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

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

4 (10) Until July 1, 2012, any person engaged in the business of  
5 conducting environmental remedial action, as defined in section 3 of  
6 this act.

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

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

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

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

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

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

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

5 (ii) Placement of pavement and sidewalks;

6 (iii) Landscaping of the site; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (6) Upon completion of the environmental remedial action, the owner  
20 shall submit to the department of ecology a report documenting the  
21 environmental remedial actions conducted at the site and documenting  
22 compliance with the requirements of chapter 70.105D RCW. This report  
23 shall include information, on a form provided by the department,  
24 regarding the effect of the tax classification of the environmental  
25 remedial action on the scope and timing of the environmental remedial  
26 action conducted.

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

1 (8) The department of ecology shall report to the legislature by  
2 December 10, 2011, on the environmental remedial actions conducted  
3 under this act. The report must include the following information:

4 (a) The number of sites for which the certifications required under  
5 subsection (3) of this section were submitted during the years 2008,  
6 2009, and 2010;

7 (b) The number of sites for which the owner's report required under  
8 subsection (6) of this section were submitted during the years 2008,  
9 2009, and 2010;

10 (c) The number of these sites which were cleaned up under a  
11 voluntary remedial action and the number of these sites which were  
12 cleaned up under state or federal order;

13 (d) An analysis of the effect of this act in encouraging site  
14 owners to conduct environmental remedial action more quickly or more  
15 effectively; and

16 (e) Recommendations to improve the timely and voluntary cleanup of  
17 contaminated sites in Washington.

18 (9) This section expires July 1, 2012.

--- END ---