PROPOSED SUBSTITUTE BILL MEMORANDUM

TO: Appropriations Committee Members

FROM: Jeff Mitchell, Staff, Finance Committee
      Catrina Lucero, Staff, Appropriations Committee
      Jessica Harrell, Staff, Appropriations Committee
      Meghan Bunch, Staff, Appropriations Committee

RE: Proposed Substitute House Bill 2269 (H-2876.8) by Representative Hunter

DATE: June 22, 2015

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Brief Summary of Proposed Substitute Bill:

- Eliminates the preferential B&O tax rate of 0.138 percent for resellers of prescription drugs.
- Repeals the sales and use tax exemption for bottled water.
- Changes the nonresident sales and use tax exemption for tangible personal property into a remittance program.
- Narrows the use tax exemption for extracted fuel.
- Eliminates the preferential B&O tax rate of 0.484 percent for royalty income.
- Establishes a nexus standard for out-of-state sellers that derive income from making retail sales into the state through agreements with Washington residents.
- Establishes an economic nexus standard for wholesale transactions attributable to Washington by out-of-state businesses.
- Limits the availability of a real estate foreclosure exemption.
- Requires local governments that issue building permits to supply subcontractor information to the Department of Revenue.
- Increases late payment penalties for state excise taxes.
- Makes appropriations from the Education Legacy Trust Account, the State General Fund, and other funds for K-12, higher education, the Department of Early Learning, the Secretary of State, the Department of Revenue, and debt service.

Background:

Sales and Use Tax.
Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property,
digital products, or services when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent. Local sales and use tax rates vary from 0.5 percent to 3.0 percent, depending on the location.

**Business and Occupation Tax.**
Washington’s major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services, and activities not classified elsewhere. Several lower rates also apply to specific business activities. A B&O tax credit is provided for businesses whose B&O tax liability is below a certain level. The credit varies depending on the amount of B&O tax due (the total of all classifications) after all other B&O tax credits have been taken. The amount of the small business B&O credit for service-related business is $840 per year, which completely exempts a service business with annual B&O gross income below $56,000 and provides a partial reduction in B&O liability for a service business with gross income at or below $112,000.

**Preferential B&O Tax Rate for Resellers of Prescription Drugs.**
A preferential B&O tax rate of 0.138 percent is provided to persons that warehouse and resell prescription drugs to retailers, hospitals, clinics, health care providers, or other providers of health care services. This tax preference was enacted to help Washington wholesalers that compete with out-of-state firms that are not subject to B&O tax due to a lack of sufficient nexus with the state. The state was unable to restrict the preferential rate only to companies with in-state warehouses. Therefore, out-of-state wholesalers with nexus in Washington also qualify for the preferential B&O tax rate. Without the preferential B&O tax rate, these businesses would pay the wholesaling B&O tax rate of 0.484 percent.

**Sales and Use Tax Exemption for Food and Food Ingredients, Including Bottled Water.**
Washington specifically exempts "food and food ingredients" from state and local sales and use taxes. Therefore, any food product included within the definition of "food and food ingredients" is exempt from sales and use tax. "Food and food ingredients" is defined to mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Prepared food, soft drinks, and dietary supplements are excluded from the definition and therefore subject to sales and use tax. However, bottled water is included within the definition and therefore exempt from sales and use tax.

**Preferential B&O Tax Rate for Royalty Income.**
Currently, royalty receipts are apportioned using a single factor receipts method and taxed at a rate of 0.484 percent. The 0.484 percent rate was adopted in 1998 (lowered from 1.5 percent) to align software royalty receipts with the rates for software manufacturing. Royalty income is compensation for the use of intangible personal property such as copyrights, patents, licenses, franchises, trademarks, and similar items.
Nonresident Sales Tax Exemption.
A sales tax exemption is allowed to a resident of a state, possession, or Canadian province that does not impose a retail sales tax, use tax, value-added tax, gross receipts tax, or similar generally applicable tax of 3 percent or more on purchases of goods for use outside the state. The exemption does not apply to items or services consumed in the state such as hotel stays or meals at restaurants. Retailers are not required to make tax exempt sales to qualifying nonresidents. A vendor may choose to collect sales tax on purchases made by qualifying nonresidents or to sell merchandise tax free.

Use Tax Exemption for Extracted Fuel.
Fuel consumed by manufacturers or extractors is exempt from use tax when the fuel is used in the process of manufacturing or extracting at the same plant. The fuels for which the exemption generally applies are to wood by-products, also referred to as "hog fuel," and to refinery fuel gas. A court decision made shortly before the Legislature created the preference in 1949 dealt with the taxability of a wood product manufacturer, the initial primary user of the exemption. There were no refineries operating in Washington when this preference was enacted in 1949. There are currently five active refineries in Washington.

Nexus.
As currently interpreted by the United States Supreme Court, the commerce clause of the United States Constitution prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state. Under the Court’s decision in Quill Corp. v. North Dakota (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state. Physical presence can be established through a taxpayer’s own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives that act on behalf of the taxpayer in the taxing state.

Currently, Washington cannot impose wholesaling B&O tax on sales of goods that originate outside the state unless the goods are:

- received by the purchaser in this state; and
- the out-of-state seller has physical presence nexus (i.e. the same physical nexus requirement that is used for sales tax purposes).

Both the criteria must be met for the seller to be subject to Washington B&O taxation. In 2010 Washington adopted an economic presence test for nexus with respect to service-related activities but not wholesaling or retailing activities. For these classifications, a business does not need to have a physical presence to have nexus and be subject to Washington tax. Economic nexus is established by having sales in excess of $267,000 to Washington customers. (The threshold is adjusted from year-to-year based on inflation.)

Real Estate Excise Tax (REET) Foreclosure Exemption.
The REET is imposed on each sale of real property, including transfers of ownership and transfers of controlling interests in entities that own property in the state. Real property includes
any interest in land or anything affixed to land. The state tax rate is 1.28 percent. Additional local rates are allowed. The combined state and local rate in most areas is 1.78 percent.

The REET does not apply to transfers made in foreclosure proceedings or through enforcement of a judgment, including foreclosures that occur through auction without court oversight. The REET also does not apply to a deed given in lieu of foreclosure to satisfy a mortgage or deed of trust.

Local Government Data with Respect to Building Permits. 
Building permit applicants must provide information to a local government in which a building permit is sought regarding the general contractor, but not subcontractors. This information is not shared by all localities with state agencies.

Late Payment Penalties. 
Under current law, late excise tax returns receive a penalty of:
- 5 percent from one day after the due date to the last day of the month following the due date;
- 15 percent from the first day of the second month following the due date to the last day of that month; and
- 25 percent from the first day of the third month and thereafter.

Deposit of Sales and B&O Taxes. 
Almost all revenues derived from sales and B&O taxes are deposited into the State General Fund. The Education Legacy Trust Account (ELTA) was created in 2005. Currently, the Washington estate tax is the sole source of revenue for the ELTA. Money in the ELTA can only be used for K-12 and higher education.

State Expenditure Limit. 
First enacted in 1993 by Initiative 601, the state expenditure limit allows expenditures from the State General Fund to grow each fiscal year by the fiscal growth factor, which is the average annual growth in state personal income over the prior 10 fiscal years. Whenever the cost of any state program or function is shifted from the State General Fund or moneys are transferred from the State General Fund to another fund or account, the state expenditure limit must be lowered to reflect the shift or transfer.

State Debt Limit. 
The state constitution limits the issuance of state general obligation debt. The State Treasurer may not issue a general obligation bond if the amount of interest and principal payments in any year, along with debt payments for existing bonds, would exceed 9.0 percent of the average of the annual general state revenue collections for the previous six fiscal years. The constitutional debt limit is reduced over time from 9.0 percent to 8.0 percent by July 1, 2034. It is set at 8.5 percent starting July 1, 2014; 8.25 percent starting July 1, 2016; and 8.0 percent starting July 1, 2034. The definition of general state revenues includes the state property tax because it is deposited in the State General Fund.
Summary of Proposed Substitute Bill:

Preferential B&O Tax Rate for Prescription Drug Resellers.
The preferential rate for resellers of prescription drugs is repealed. Resellers of prescription drugs are subject to the 0.484 percent wholesaling rate.

Sales Taxes on Bottled Water.
State and local sales and use taxes are extended to bottled water by removing bottled water from the food and food ingredients sales tax exemption. Exemptions are provided for bottled water dispensed by

Preferential B&O Tax Rate for Royalty Income.
Currently, royalty receipts are apportioned using a single factor receipts method and taxed at a rate of 0.484 percent. The 0.484 percent rate was adopted in 1998 (lowered from 1.5 percent) to align software royalty receipts with the rates for software manufacturing. Royalty income is compensation for the use of intangible personal property such as copyrights, patents, licenses, franchises, trademarks, and similar items.

Nonresident Sales Tax Exemption.
A sales tax exemption is allowed to a resident of a state, possession, or Canadian province that does not impose a retail sales tax, use tax, value-added tax, gross receipts tax, or similar generally applicable tax of 3 percent or more on purchases of goods for use outside the state. The exemption does not apply to items or services consumed in the state such as hotel stays or meals at restaurants. Retailers are not required to make tax exempt sales to qualifying nonresidents. A vendor may choose to collect sales tax on purchases made by qualifying nonresidents or to sell merchandise tax free.

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In 2010 Washington adopted an economic presence test for nexus with respect to service-related activities. For these classifications, a business does not need to have a physical presence to have nexus and be subject to Washington tax. Economic nexus is established by having sales in excess of $267,000 to Washington customers. (The threshold is adjusted from year-to-year.)

This proposal eliminates the "physical presence" standard and replaces it with an “economic nexus” standard for wholesaling activities. Wholesale businesses that lack physical nexus but gross $267,000 or more in sales to Washington customers in any calendar year will become subject to B&O tax.

Real Estate Excise Tax (REET) Foreclosure Exemption.
The REET is imposed on each sale of real property, including transfers of ownership and transfers of controlling interests in entities that own property in the state. Real property includes any interest in land or anything affixed to land. The state tax rate is 1.28 percent. Additional local rates are allowed. The combined state and local rate in most areas is 1.78 percent.

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Under current law, late excise tax returns are subject to a penalty of:
- 5 percent from one day after the due date to the last day of the month following the due date;
- 15 percent from the first day of the second month following the due date to the last day of that month; and
- 25 percent from the first day of the third month and thereafter.

Deposit of Additional Tax Revenues.
Because new B&O and sales tax revenues in the bill cannot be directly tracked, these additional amounts are estimated twice a year by the DOR and transferred from the State General Fund to the ELTA. Early learning is added as an authorized used of the ELTA.

State Expenditure Limit.
The transfers from the State General Fund to the ELTA are exempted from the requirement to lower the state expenditure limit.

State Debt Limit./New tax revenues initially deposited in the State General Fund are explicitly excluded from the calculation of general state revenues for purposes of the state debt limit determination.
Appropriations.
Appropriations are made for the 2015-17 fiscal biennium.

- A total of $12.9 million from the State General Fund for the Secretary of State and the Department of Revenue.
- A total of $159.2 million from the ELTA for K-12 programs and compensation.
- A total of $103.6 million from the ELTA for higher education institutions and financial aid.
- A total of $32.0 million from the Building Construction fund for the University of Washington.
- A total of $28.3 million for the Department of Early Learning.
- A total of $37.2 million from various funds for debt service.

Effective Date.
The bill contains an emergency clause and takes effect August 1, 2015, except section 1004 and Part IX, relating to the Education Legacy Trust Account and appropriations from it and other accounts, which take effect July 1, 2015, and Parts I, VI, and VII, relating to excise taxes, which take effect September 1, 2015.
## Proposed Substitute House Bill 2269
Near General Fund Plus Opportunity Pathways
(Dollars In Millions)

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<thead>
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<th></th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
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<tr>
<td>K-12</td>
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<td>102.7</td>
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<td>69.5</td>
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<td>Early Learning</td>
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<td>All Other Items</td>
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<td>5.9</td>
<td>5.9</td>
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<td>248.8</td>
<td>241.5</td>
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<td>830.1</td>
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<tr>
<td><strong>Ending Balance</strong></td>
<td>53.1</td>
<td>15.5</td>
<td>3.8</td>
<td>0.6</td>
<td>0.6</td>
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## 2015-17 Omnibus Operating Budget

**PSHB 2269 (June 22)**

(Dollars in Thousands)

<table>
<thead>
<tr>
<th>FTEs</th>
<th>NGF+OpPth</th>
<th>Total</th>
</tr>
</thead>
</table>

### Governmental Operations

**Office of the Secretary of State**

1. Information Technology Academy
   - FTEs: 0.0
   - NGF+OpPth: 1,543
   - Total: 1,543

### Department of Revenue

2. Revenue Implementation Funding
   - FTEs: 54.0
   - NGF+OpPth: 11,369
   - Total: 11,369

**Total Governmental Operations**

- FTEs: 54.0
- NGF+OpPth: 12,912
- Total: 12,912

### Public Schools

**OSPI & Statewide Programs**

3. Computer Science Grants
   - FTEs: 0.0
   - NGF+OpPth: 2,000
   - Total: 2,000

4. College Success
   - FTEs: 0.0
   - NGF+OpPth: 2,867
   - Total: 2,867

**Total OSPI & Statewide Programs**

- FTEs: 0.0
- NGF+OpPth: 4,867
- Total: 4,867

**Education Reform**

5. Microsoft IT Academy
   - FTEs: 0.0
   - NGF+OpPth: 2,000
   - Total: 2,000

### Compensation Adjustments

6. Additional COLA
   - FTEs: 0.0
   - NGF+OpPth: 152,294
   - Total: 152,294

**Total Public Schools**

- FTEs: 0.0
- NGF+OpPth: 159,161
- Total: 159,161

### Higher Education

**Student Achievement Council**

7. Opportunity Scholarship
   - FTEs: 0.0
   - NGF+OpPth: 24,000
   - Total: 24,000

**University of Washington**

8. Computer Science Building
   - FTEs: 0.0
   - NGF+OpPth: 32,000

9. Computer Science Enrollments
   - FTEs: 0.0
   - NGF+OpPth: 12,000

10. Medical Residencies
    - FTEs: 0.0
    - NGF+OpPth: 8,000

11. Freeze Tuition/State Support
    - FTEs: 0.0
    - NGF+OpPth: 18,084

**Total University of Washington**

- FTEs: 0.0
- NGF+OpPth: 38,084
- Total: 38,084

**Washington State University**

12. WSU Medical School
    - FTEs: 0.0
    - NGF+OpPth: 2,500

13. Freeze Tuition/State Support
    - FTEs: 0.0
    - NGF+OpPth: 10,349

**Total Washington State University**

- FTEs: 0.0
- NGF+OpPth: 12,849
- Total: 12,849

**Eastern Washington University**

14. Freeze Tuition/State Support
    - FTEs: 0.0
    - NGF+OpPth: 3,228

**Central Washington University**

15. Freeze Tuition/State Support
    - FTEs: 0.0
    - NGF+OpPth: 2,806

**The Evergreen State College**

16. Freeze Tuition/State Support
    - FTEs: 0.0
    - NGF+OpPth: 1,393
### 2015-17 Omnibus Operating Budget
#### PSHB 2269 (June 22)
(Dollars in Thousands)

<table>
<thead>
<tr>
<th></th>
<th>FTEs</th>
<th>NGF+OpPth</th>
<th>Total</th>
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<tr>
<td>17. Freeze Tuition/State Support</td>
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<tr>
<td><strong>Community &amp; Technical College System</strong></td>
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<td>18. MESA Expansion</td>
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<td>19. Freeze Tuition/State Support</td>
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<td>Total</td>
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<td><strong>Other Education</strong></td>
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<tr>
<td><strong>Department of Early Learning</strong></td>
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<tr>
<td>20. ECEAP Expansion</td>
<td>3.5</td>
<td>24,250</td>
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<tr>
<td>21. Early Intervention</td>
<td>0.0</td>
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<tr>
<td>Total</td>
<td>3.5</td>
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<td>28,250</td>
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<tr>
<td><strong>Total Other Education</strong></td>
<td>3.5</td>
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<td><strong>Special Appropriations</strong></td>
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<tr>
<td><strong>Bond Retirement and Interest</strong></td>
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<td>22. Debt Service on New Projects</td>
<td>0.0</td>
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<tr>
<td>Total</td>
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<td><strong>Total</strong></td>
<td>57.5</td>
<td>340,770</td>
<td>318,532</td>
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</table>

**Comments:**

**Governmental Operations**

**Office of the Secretary of State**

1. **INFORMATION TECHNOLOGY ACADEMY** - Funding is provided for the State Library to purchase statewide online access to the Information Technology Academy to allow public access to online courses and learning resources through public libraries.

**Department of Revenue**

2. **REVENUE IMPLEMENTATION FUNDING** - Funding is provided for the implementation of legislation impacting the Department of Revenue. (General Fund-State)

**Public Schools**

**OSPI & Statewide Programs**

3. **COMPUTER SCIENCE GRANTS** - Funding is provided for a computer science and education grant program to support three purposes: train and credential teachers in computer sciences; provide and upgrade technology needed to learn computer science; and for computer science frontiers grants to introduce students to and engage them in computer science. The Office of the Superintendent of Public Instruction is directed to use the computer science learning standards adopted pursuant to Chapter 3, Laws of 2015 1st sp. sess. (cop. science ed) in implementing the grant.
4. **COLLEGE SUCCESS** - Washington Achievers Scholars supports community involvement officers in the recruitment, training, and matching of community volunteer mentors with students selected as achievers scholars, providing mentorship to low income high school juniors and seniors through their freshman year of college. The College Bound Scholarship program provides annual college tuition and a book allowance for low income Washington Students. Funding is provided to expand the Washington Achievers Scholars program within King and Pierce counties. Additionally, funding is provided to replace federal and private dollars that are no longer available to the College Bound Scholarship program.

**Education Reform**

5. **MICROSOFT IT ACADEMY** - Additional funding is provided to expand the Microsoft IT Academy in middle schools.

**Compensation Adjustments**

6. **ADDITIONAL COLA** - Consistent with the increases provided to state employees, the school employee cost-of-living increases are funded at 3.0 percent for the 2015-16 school year and 1.8 percent for the 2016-17 school year. These increases are inclusive of the Initiative 732 cost-of-living increase estimated at 1.8 percent for the 2015-16 school year and 1.2 percent for the 2016-17 school year, as provided in the omnibus appropriations act.

**Higher Education**

**Student Achievement Council**

7. **OPPORTUNITY SCHOLARSHIP** - Funding is provided for state match requirements in FY 2016 and expected state match requirements in FY 2017. (Education Legacy Trust Account-State)

**University of Washington**

8. **COMPUTER SCIENCE BUILDING** - Funding is provided for the computer science and engineering building at the University of Washington. (State Building Construction Account-State)

9. **COMPUTER SCIENCE ENROLLMENTS** - Funding is provided to expand computer science and engineering enrollments in the Department of Computer Science and Engineering at the Seattle campus. (Education Legacy Trust Account-State)

10. **MEDICAL RESIDENCIES** - Additional funding is provided to the Family Practice Medicine Residency Network at the UW to expand the number of residency slots available in Washington. (Education Legacy Trust Account-State)

11. **FREEZE TUITION/STATE SUPPORT** - Funding is provided to freeze resident undergraduate tuition and increase state support. (Education Legacy Trust Account-State)

**Washington State University**

12. **WSU MEDICAL SCHOOL** - Funding is provided for Washington State University to establish a medical school in Spokane. (Education Legacy Trust Account-State)

13. **FREEZE TUITION/STATE SUPPORT** - Funding is provided to freeze resident undergraduate tuition and increase state support. (Education Legacy Trust Account-State)

**Eastern Washington University**

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**The Evergreen State College**

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Western Washington University

17. **FREEZE TUITION/STATE SUPPORT** - Funding is provided to freeze resident undergraduate tuition and increase state support. (Education Legacy Trust Account-State)

Community & Technical College System

18. **MESA EXPANSION** - The Mathematics, Engineering, Science Achievement (MESA) program improves math outcomes for community and technical college students from under-represented communities. Funding is provided to expand the presence of the Mathematics, Engineering, Science Achievement (MESA) community college program on campuses throughout Washington. (Education Legacy Trust Account-State)

19. **FREEZE TUITION/STATE SUPPORT** - Funding is provided to freeze resident tuition and increase state support. (Education Legacy Trust Account-State)

Other Education

Department of Early Learning

20. **ECEAP EXPANSION** - Additional slots are added to the Early Childhood Education and Assistance program (ECEAP), which provides pre-school and wrap-around services to low-income children. An additional 1,600 2.5 hour standard ECEAP slots are provided in FY 2016 and maintained in FY 2017. All new slots are funded at the current rate of $7,578 per slot per year. (Education Legacy Trust Account-State)

21. **EARLY INTERVENTION** - Funding for early intervention assessment and services, such as physical and speech therapy, is increased. Increased funding will support approximately 1,500 more children. (Education Legacy Trust Account-State)

Special Appropriations

Bond Retirement and Interest

22. **DEBT SERVICE ON NEW PROJECTS** - Funding is provided for debt service incurred from issuing new debt to fund the 2015-17 biennial capital budget. (General Fund-State, various other accounts)
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<tr>
<td>1</td>
<td>Extend the sales tax to bottled water</td>
<td>$17.5</td>
<td>$23.0</td>
<td>$40.5</td>
<td>$22.6</td>
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<td>$44.8</td>
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<td>2</td>
<td>Refund state sales tax if nonresident pays $25 or more sales tax in a year (states, possessions, and provinces &lt;3.0% sales tax)</td>
<td>$21.9</td>
<td>$27.4</td>
<td>$49.3</td>
<td>$28.5</td>
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<td>3</td>
<td>Repeal preferential B&amp;O tax rate for prescription drug resellers (0.484%)</td>
<td>$14.7</td>
<td>$18.5</td>
<td>$33.2</td>
<td>$19.3</td>
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<td>4</td>
<td>Narrowing the use tax exemption for extracted fuel</td>
<td>$13.1</td>
<td>$15.9</td>
<td>$29.0</td>
<td>$16.1</td>
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<td>5</td>
<td>Repeal preferential B&amp;O rate for royalty income</td>
<td>$13.9</td>
<td>$17.4</td>
<td>$31.3</td>
<td>$18.3</td>
<td>$19.2</td>
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<td>6</td>
<td>Click-through Nexus only</td>
<td>$11.8</td>
<td>$16.5</td>
<td>$28.3</td>
<td>$17.3</td>
<td>$18.0</td>
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<td>7</td>
<td>Limit REET exemption for foreclosures</td>
<td>$30.0</td>
<td>$43.9</td>
<td>$73.9</td>
<td>$45.6</td>
<td>$47.3</td>
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<td>8</td>
<td>Increase late payment penalties: 5% to 8%, 15% to 18% and 25% to 28%</td>
<td>$7.8</td>
<td>$9.4</td>
<td>$17.2</td>
<td>$9.4</td>
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<tr>
<td>9</td>
<td>Improve DOR data collection from local government</td>
<td>$2.4</td>
<td>$5.8</td>
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<td>10</td>
<td>Extend economic nexus to wholesaling</td>
<td>$12.0</td>
<td>$33.4</td>
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<td><strong>GRAND TOTAL</strong></td>
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<td><strong>$229.8</strong></td>
<td><strong>$244.6</strong></td>
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Office of Program Research                                   June 22, 2015
AN ACT Relating to investing in education and essential public services by modifying and improving the fairness of Washington's tax system; amending RCW 82.08.0293, 82.12.0293, 82.08.0273, 82.12.0263, 82.04.2907, 82.04.066, 82.04.067, 82.04.424, 82.45.010, 82.45.080, 82.32.090, 18.27.110, 18.27.200, and 83.100.230; reenacting and amending RCW 82.04.280 and 82.32.790; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; adding new sections to chapter 82.32 RCW; adding a new section to chapter 43.135 RCW; adding a new section to chapter 39.42 RCW; creating new sections; repealing RCW 82.04.272; repealing 2010 c 106 s 206, 2009 c 461 s 3, 2006 c 300 s 7, and 2003 c 149 s 4; prescribing penalties; making appropriations; providing effective dates; and declaring an emergency.

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

PART I

Eliminating the Sales and Use Tax Exemption for Bottled Water

Sec. 101. RCW 82.08.0293 and 2014 c 140 s 22 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means...
substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. (For purposes of this subsection, the following definitions apply.) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

((b)) (c) (i) "Prepared food" means:
   (A) Food sold in a heated state or heated by the seller;
   (B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or
   (C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:
      (I) Food that is only cut, repackaged, or pasteurized by the seller; or
      (II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

   (ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:
      (A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";
      (B) Food sold in an unheated state by weight or volume as a single item; or
      (C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

   ((c)) (d) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section
applies to food and food ingredients that are furnished, prepared, or
served as meals:

(a) Under a state administered nutrition program for the aged as
provided for in the older Americans act (P.L. 95-478 Title III) and
RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with
disabilities, or low-income persons by a not-for-profit organization
organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or
older, of a qualified low-income senior housing facility by the
lessor or operator of the facility. The sale of a meal that is billed
to both spouses of a marital community or both domestic partners of a
domestic partnership meets the age requirement in this subsection
(3)(c) if at least one of the spouses or domestic partners is at
least sixty-two years of age. For purposes of this subsection,
"qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing
project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485;

(iii) For which the lessor or operator has at any time been
entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail
sale of food and food ingredients is subject to sales tax under RCW
82.08.020 if the food and food ingredients are sold through a vending
machine. Except as provided in (b) of this subsection, the selling
price of food and food ingredients sold through a vending machine for
purposes of RCW 82.08.020 is fifty-seven percent of the gross
receipts.

(b) For soft drinks, bottled water, and hot prepared food and
food ingredients, other than food and food ingredients which are
heated after they have been dispensed from the vending machine, the
selling price is the total gross receipts of such sales divided by
the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements
that the tax be collected from the buyer and that the amount of tax
be stated as a separate item are waived.
Sec. 102. RCW 82.12.0293 and 2011 c 2 s 303 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. "Prepared food," "soft drinks," "bottled water," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients which are furnished, prepared, or served as meals:
   (a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);
   (b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or
   (c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

NEW SECTION. Sec. 103. A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water dispensed or to be dispensed to patients, pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or other medical condition.

(2) For purposes of this section, "prescription" means an order, formula, or recipe issued in any form of oral, written, electronic,
or other means of transmission by a duly licensed practitioner
authorized by the laws of this state to prescribe.

(3) Except for sales of bottled water delivered to the buyer in a
reusable container that is not sold with the water, sellers must
collect tax on sales subject to this exemption. Any buyer that has
paid at least twenty-five dollars in state and local sales taxes on
purchases of bottled water subject to this exemption may apply for a
refund of the taxes directly from the department in a form and manner
prescribed by the department. The department must deny any refund
application if the amount of the refund requested is less than
twenty-five dollars. No refund may be made for taxes paid more than
four years after the end of the calendar year in which the tax was
paid to the seller.

(4) The provisions of RCW 82.32.060 apply to refunds authorized
under this section.

(5) With respect to sales of bottled water delivered to the buyer
in a reusable container that is not sold with the water, buyers
claiming the exemption provided in this section must provide the
seller with an exemption certificate in a form and manner prescribed
by the department. The seller must retain a copy of the certificate
for the seller's files. In lieu of an exemption certificate, a seller
may capture the relevant data elements as allowed under the
streamlined sales and use tax agreement.

NEW SECTION. Sec. 104. A new section is added to chapter 82.12
RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the
use of bottled water dispensed or to be dispensed to patients,
pursuant to a prescription for use in the cure, mitigation,
treatment, or prevention of disease or medical condition.

(2) For the purposes of this section, "prescription" has the same
meaning as provided in section 103 of this act.

NEW SECTION. Sec. 105. A new section is added to chapter 82.08
RCW to read as follows:

(1)(a) Subject to the conditions in this section, the tax levied
by RCW 82.08.020 does not apply to sales of bottled water to persons
whose primary source of drinking water is unsafe or to a government
entity or charitable organization when the bottled water will be
donated by the purchaser to persons whose primary source of drinking 
water is unsafe.

(b) For purposes of this subsection and section 106 of this act, 
a person's primary source of drinking water is unsafe if:

(i) The public water system providing the drinking water has 
issued a public notification that the drinking water may pose a 
health risk, and the notification is still in effect on the date that 
the bottled water was purchased;

(ii) Test results on the person's drinking water, which are no 
more than twelve months old, from a laboratory certified to perform 
drinking water testing show that the person's drinking water does not 
meet safe drinking water standards applicable to public water 
systems; or

(iii) The person otherwise establishes, to the department's 
satisfaction, that the person's drinking water does not meet safe 
drinking water standards applicable to public water systems.

(2) Except for sales of bottled water delivered to the buyer in a 
reusable container that is not sold with the water, sellers must 
collect tax on sales subject to this exemption. Any buyer that has 
paid at least twenty-five dollars in state and local sales taxes on 
purchases of bottled water subject to this exemption may apply for a 
refund of the taxes directly from the department in a form and manner 
prescribed by the department. The department must deny any refund 
application if the amount of the refund requested is less than 
twenty-five dollars. No refund may be made for taxes paid more than 
four years after the end of the calendar year in which the tax was 
paid to the seller.

(3) The provisions of RCW 82.32.060 apply to refunds authorized 
under this section.

(4)(a) With respect to sales of bottled water delivered to the 
buyer in a reusable container that is not sold with the water, buyers 
claiming the exemption provided in this section must provide the 
seller with an exemption certificate in a form and manner prescribed 
by the department. The seller must retain a copy of the certificate 
for the seller's files. In lieu of an exemption certificate, a seller 
may capture the relevant data elements as allowed under the 
streamlined sales and use tax agreement.

(b) The department may waive the requirement for an exemption 
certificate in the event of disaster or similar circumstance.
NEW SECTION. Sec. 106. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of bottled water by persons whose primary source of drinking water is unsafe as provided in section 105 of this act or to bottled water donated by a government entity or charitable organization to persons whose primary source of drinking water is unsafe as provided in section 105 of this act.

NEW SECTION. Sec. 107. RCW 82.32.805 and 82.32.808 do not apply to sections 103 through 106 of this act.

PART II
Establishing a Refund Requirement for the Nonresident Sales and Use Tax Exemption

Sec. 201. RCW 82.08.0273 and 2014 c 140 s 17 are each amended to read as follows:

(1) Subject to the conditions and limitations in this section, the tax levied by RCW 82.08.020 ((does not apply to)) in the form of a remittance from the department is provided for sales to nonresidents of this state of tangible personal property, digital goods, and digital codes((when)). The exemption only applies if:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax, use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at ((his or her)) the purchaser's place of residence to assure that such purchases are not first used substantially in the state of Washington.
(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the seller certifies in writing to the purchaser that the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the provisions in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must pay the state and local sales tax to the seller at the time of purchase and then request a remittance from the department in accordance with this subsection and subsection (4) of this section. A request for remittance must include proof of the person's status as a nonresident at the time of the purchase for which a remittance is requested. The request for a remittance must also include any additional information and documentation as required by the department, which may include a description of the item purchased for which a remittance is requested, the sales price of the item, the amount of state sales tax paid on the item, the date of the purchase, the name of the seller and the physical address where the sale took place, a copy of the certification required in subsection (2) of this section, and copies of sales receipts showing the qualified purchases.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this
subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

((c) In lieu of furnishing proof of a person's nonresident status under (b) of this subsection (3), a person claiming exemption from retail sales tax under the provisions of this section may provide the seller with an exemption certificate in compliance with subsection (4)(b) of this section.)

(4)(a) (Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor must examine the purchaser's proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which must show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(b) In lieu of using the method provided in (a) of this subsection to document an exempt sale to a nonresident, a seller may accept from the purchaser a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board or any other exemption certificate as may be authorized by the department and properly completed by the purchaser. A nonresident purchaser who uses an exemption certificate authorized in this subsection (4)(b) must include the purchaser's driver's license number or other state-issued identification number and the state of issuance.

(c) In lieu of using the methods provided in (a) and (b) of this subsection to document an exempt sale to a nonresident, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this code.
section, is guilty of a misdemeanor and, in addition, is liable for
the tax and subject to a penalty equal to the greater of one hundred
dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax and
who fails to maintain records of sales to nonresidents as provided in
this section is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail
sales tax under this section and who has actual knowledge that the
purchaser’s proof of identification establishing out-of-state
residency is fraudulent is guilty of a misdemeanor and, in addition,
is liable for the tax and subject to a penalty equal to the greater
of one thousand dollars or the tax due on such sales. In addition,
both the purchaser and the vendor are liable for any penalties and
interest assessable under chapter 82.32 RCW))

(i) Beginning January 1, 2016, through December 31, 2016, a person may request a remittance
from the department for state sales taxes paid by the person on
qualified retail purchases made in Washington between July 1, 2015,
and December 31, 2015.

(ii) Beginning January 1, 2017, a person may request a remittance
from the department during any calendar year for state sales taxes
paid by the person on qualified retail purchases made in Washington
during the immediately preceding calendar year only. No application
may be made with respect to purchases made before the immediately
preceding calendar year.

(b) The remittance request, including proof of nonresident status
and any other documentation and information required by the
department, must be made in a form and manner as prescribed by the
department. Only one remittance request may be made by a person per
calendar year.

(c) The total amount of a remittance request must be at least
twenty-five dollars. The department must deny any request for a
remittance that is less than twenty-five dollars.

(d) The department will examine the applicant’s proof of
nonresident status and any other documentation and information as
required in the application to determine whether the applicant is
entitled to a remittance under this section.

(5)(a) Any person making fraudulent statements to the department,
which includes the offer of fraudulent or fraudulently procured
identification or fraudulent sales receipts, in order to receive a
remittance of retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person requesting a remittance of sales tax from the department by providing proof of identification or sales receipts not the person's own, or counterfeit identification or sales receipts, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6) The exemption provided by this section is for state sales taxes only.

(7) A nonresident who receives a refund of sales tax from the seller for any reason with respect to a purchase made in this state is not entitled to a remittance for the tax paid on the purchase. A person who receives both a remittance under this section and a refund from the seller with respect to the same purchase must immediately repay the remittance to the department. Interest as provided in chapter 82.32 RCW applies to amounts due under this section from the date that the department made the remittance until the amount due under this subsection is paid to the department. A person who receives a remittance with respect to a purchase for which the person had, at the time the person submitted the application for a remittance, already received a refund of sales tax from the seller is also liable for the evasion penalty in RCW 82.32.090(7) and is ineligible to receive any further remittances from the department under this section.

((7-)) (8) The exemption in this section does not apply to sales of marijuana, useable marijuana, or marijuana-infused products.

PART III
Repealing the Preferential B&O Tax Rate for Sellers of Prescription Drugs

NEW SECTION. Sec. 301. RCW 82.04.272 (Tax on warehousing and reselling prescription drugs) and 2013 c 19 s 127, 2003 c 168 s 401, & 1998 c 343 s 1 are each repealed.

Sec. 302. RCW 82.04.280 and 2010 c 106 s 205 are each reenacted and amended to read as follows:
Upon every person engaging within this state in the business of: (a) Printing materials other than newspapers, and of publishing periodicals or magazines; (b) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (c) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (d) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (e) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW; (f) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the federal communications commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (g) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a
desired temperature to maintain the quality of the product for orderly marketing.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. ("Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.)

(c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

Sec. 303. RCW 82.32.790 and 2010 c 114 s 201 and 2010 c 106 s 401 are each reenacted and amended to read as follows:


(2) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) Chapter 149, Laws of 2003 takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of sections 104, 110, 117, 123, 125, 129, 131, and
150, chapter 114, Laws of 2010, section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of 2006, and section 4, chapter 149, Laws of 2003) to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and chapter 149, Laws of 2003 is effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department must make a determination that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10, chapter 149, Laws of 2003. The department is not authorized to make a second determination regarding the effective date of chapter 149, Laws of 2003.

NEW SECTION. Sec. 304. The following acts or parts of acts are each repealed:

(1) 2010 c 106 s 206;
(2) 2009 c 461 s 3;
(3) 2006 c 300 s 7; and
(4) 2003 c 149 s 4.

NEW SECTION. Sec. 305. Section 301 of this act applies to taxes due for reporting periods beginning on or after the effective date of section 301 of this act.

PART IV

Narrowing the Use Tax Exemption for Extracted Fuel

Sec. 401. RCW 82.12.0263 and 1980 c 37 s 62 are each amended to read as follows:

The provisions of this chapter (shall) do not apply in respect to the use of biomass fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. For purposes of this section, "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes...
partially organic by-products of pulp, paper, and wood manufacturing processes.

NEW SECTION. Sec. 402. A new section is added to chapter 82.12 RCW to read as follows:

(1) The value of the article used with respect to refinery fuel gas under this chapter is the most recent monthly United States natural gas wellhead price, as published by the federal energy information administration.

(2) A credit is allowed against the tax otherwise due under RCW 82.12.020 on the use of refinery fuel gas by the manufacturer of the gas. The credit is equal to the value of the refinery fuel gas used multiplied by 2.648 percent.

(3) This section is exempt from the provisions of RCW 82.32.805 and 82.32.808.

PART V
Repealing the Preferential B&O Tax Rate for Royalty Income

Sec. 501. RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties, the amount of tax with respect to the business is equal to the gross income from royalties multiplied by the rate (of 0.484 percent) provided in RCW 82.04.290(2)(a).

(2) For the purposes of this section, "gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

PART VI
Nexus for Excise Tax Purposes
NEW SECTION. Sec. 601. (1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in Quill Corp. v. North Dakota, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

(3) The legislature further recognizes that the requisite physical presence can be established directly through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives who act on behalf of the taxpayer in the taxing state.

(4) However, the legislature finds that because the United States supreme court has not clearly defined the circumstances under which a physical presence is sufficient to establish a substantial nexus for tax purposes, frequent conflicts have arisen throughout the country among state taxing authorities, taxpayers, tax practitioners, and courts.

(5) Therefore, the legislature intends to provide more clarity for out-of-state sellers that compensate Washington residents for referring customers to the out-of-state seller by providing clear statutory guidelines for determining when these out-of-state sellers are required to collect Washington's retail sales tax.

(6) Nothing in part II of this act may be construed as relieving in-state businesses and other businesses having a substantial nexus with Washington through a direct physical presence in this state from their Washington sales and use tax collection obligations.

NEW SECTION. Sec. 602. A new section is added to chapter 82.08 RCW to be codified between RCW 82.08.050 and 82.08.054 to read as follows:

(1) For purposes of this chapter, a remote seller is presumed to have a substantial nexus with this state and is obligated to collect retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to
the remote seller, if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller by all residents with this type of an agreement with the remote seller exceed ten thousand dollars during the preceding calendar year. This presumption may be rebutted by proof that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Proof may be shown by (a) establishing, in a manner acceptable to the department, that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition; or (b) any other means as may be approved by the department.

(2) "Remote seller" means a seller that makes retail sales in this state through one or more agreements described in subsection (1) of this section, and the seller's other physical presence in this state, if any, is not sufficient to establish a retail sales or use tax collection obligation under the commerce clause of the United States Constitution.

(3) Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).

(4) This section is subject to section 605 of this act.

Sec. 603.  RCW 82.04.066 and 2010 1st sp.s. c 23 s 103 are each amended to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or wholesale sales taxable under RCW 82.04.257(1) or 82.04.270, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

Sec. 604.  RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each amended to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if the person is:

(a) An individual and is a resident or domiciliary of this state;
(b) A business entity and is organized or commercially domiciled in this state; or

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any the immediately preceding tax year the person has had:

(i) More than fifty thousand dollars of property in this state;
(ii) More than fifty thousand dollars of payroll in this state;
(iii) More than two hundred fifty thousand dollars of receipts from this state; or
(iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(2)(a) Property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section is the average value of the taxpayer's property, including intangible property, owned or rented and used in this state during the immediately preceding tax year.

(b)(i) Property owned by the taxpayer, other than loans and credit card receivables owned by the taxpayer, is valued at its original cost basis. Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(ii) Property rented by the taxpayer is valued at eight times the net annual rental rate. For purposes of this subsection, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property must be determined by averaging the values at the beginning and ending of the tax year; but the department may require the averaging of monthly values during the tax year if reasonably required to properly reflect the average value of the taxpayer's property.

(d)(i) For purposes of this subsection (2), loans and credit card receivables are deemed owned and used in this state as follows:

(A) Loans secured by real property, personal property, or both real and personal property are deemed owned and used in the state if the real property or personal property securing the loan is located within this state. If the property securing the loan is located both within this state and one or more other states, the loan is deemed owned and used in this state if more than fifty percent of...
the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the loan is deemed owned and used in this state if the borrower is located in this state. The determination of whether the real or personal property securing a loan is located within this state must be made, as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded.

(B) Loans not secured by real or personal property are deemed owned and used in this state if the borrower is located in this state.

(C) Credit card receivables are deemed owned and used in this state if the billing address of the cardholder is in this state.

(ii)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

(B) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) Notwithstanding anything else to the contrary in this subsection, property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section does not include a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; and digital goods and digital codes residing on servers located in this state.

(3)(a) Payroll counting toward the thresholds in subsection (1)(c)(ii) and (iv) of this section is the total amount paid by the taxpayer for compensation in this state during the immediately preceding tax year plus nonemployee compensation paid to representative third parties in this state. Nonemployee compensation paid to representative third parties includes the gross amount paid to nonemployees who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(b) Employee compensation is paid in this state if the compensation is properly reportable to this state for unemployment
compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(d) For purposes of this subsection, "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees or nonemployees and defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as existing on June 1, 2010.

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are:

(a) Those amounts included in the numerator of the receipts factor under RCW 82.04.462( (and ));

(b) For financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(c) For persons taxable under RCW 82.04.257(1) or 82.04.270 with respect to wholesale sales, the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor.
(6)(a) Subsections (1) through (5) of this section only apply with respect to the taxes (imposed under this chapter) on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the tax year, which need only be demonstrably more than a slightest presence.

(b) For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state.

(c)(i) A person is also physically present in this state for the purposes of this subsection if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(ii) A remote seller as defined in section 602 of this act is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under section 602 of this act. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in section 602 of this act. To the extent that the presumption in section 602 of this act is no longer operative pursuant to section 605 of this act, the presumption in this subsection (6)(c)(ii) is no longer operative. Nothing in this section may be construed to affect in any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow the scope of the terms "agent" or "other representative" in this subsection (6)(c).

NEW SECTION. Sec. 605. A new section is added to chapter 82.32 RCW to read as follows:

(1) If the department determines that a change, taking effect after the effective date of this section, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of section 602 of this act, such conflicting provision or provisions of section 602 of this act, including any related
provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:
(a) A change in federal law conflicts with section 602 of this act if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers to the extent provided for, under section 602 of this act.
(b) A change in the streamlined sales and use tax agreement conflicts with section 602 of this act if one or more provisions of section 602 of this act causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of section 602 of this act, the department:
(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers to the fullest extent allowed under state and federal law; and
(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of section 602 of this act that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller" has the same meaning as in section 602 of this act.

Sec. 606. RCW 82.04.424 and 2003 c 76 s 2 are each amended to read as follows:
(1) This chapter does not apply to a person making retail sales in Washington if:
(a) The person's activities in this state, whether conducted directly or through another person, are limited to:
(i) The storage, dissemination, or display of advertising;
(ii) The taking of orders; or
(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons which are affiliated with respect to each other.

(2) (a) This section expires when: ((a)) (i) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or ((b)) (ii) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(b) The department of revenue must provide notice of the expiration date of this section to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

PART VII

Real Estate Excise Tax on Foreclosures

NEW SECTION. Sec. 701. The legislature finds that the existing real estate excise tax exemption for transfers occurring in the context of bank foreclosures and the enforcement of judgments by creditors does not benefit distressed homeowners except in limited circumstances. The exemption has been broadly used to exempt sales made to third-party buyers by combining an unrelated sales transaction into the foreclosure proceeding. In addition, there have been questions raised in litigation whether the exemption applies to orders of sales arising in any court context, rather than those expressly identified in the existing exemption. It is the intent of the legislature to (1) eliminate the real estate excise tax exemption for transfers that occur in foreclosures except in circumstances where the tax would impact the owner of the property, and (2)
restructure the existing statute to preserve the exemption for deeds
given in lieu of the foreclosure process and transfers made to
extinguish existing security interests. Because this restructuring is
intended only to clarify and preserve existing exemptions, the
legislature does not intend for the provisions of RCW 82.32.805 or
82.32.808 to apply to sections 702 and 703 of this act.

Sec. 702. RCW 82.45.010 and 2014 c 58 s 24 are each amended to
read as follows:

(1) As used in this chapter, the term "sale" has its ordinary
meaning and includes any conveyance, grant, assignment, quitclaim, or
transfer of the ownership of or title to real property, including
standing timber, or any estate or interest therein for a valuable
consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to
purchase real property, including standing timber, or any estate or
interest therein or other contract under which possession of the
property is given to the purchaser, or any other person at the
purchaser's direction, and title to the property is retained by the
vendor as security for the payment of the purchase price. The term
also includes the grant, assignment, quitclaim, sale, or transfer of
improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition
within any twelve-month period of a controlling interest in any
entity with an interest in real property located in this state for a
valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the
exercise of an option, a controlling interest was transferred or
acquired within a twelve-month period, the date that the option
agreement was executed is the date on which the transfer or
acquisition of the controlling interest is deemed to occur. For all
other purposes under this chapter, the date upon which the option is
exercised is the date of the transfer or acquisition of the
controlling interest.

(c) For purposes of this subsection, all acquisitions of persons
acting in concert must be aggregated for purposes of determining
whether a transfer or acquisition of a controlling interest has taken
place. The department must adopt standards by rule to determine when
persons are acting in concert. In adopting a rule for this purpose,
the department must consider the following:
Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of (a mortgage) either a mortgage or deed of trust, except to the extent of any additional consideration provided to the grantor.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage, deed of trust, or other transfer of an interest in real property merely to secure a debt, or the assignment, reconveyance, or release thereof.
(j) Any transfer or conveyance made pursuant to a foreclosure of a mortgage or deed of trust, or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust) pursuant to chapter 6.17 RCW, when:

(i) The transfer or conveyance is to other than the mortgagee, beneficiary of the deed of trust, lienholder, or judgment creditor, and the selling price exceeds the amount of the lien, security interest, or judgment that is the subject of the foreclosure or execution; or

(ii) The transfer or conveyance is to the United States, this state, or any political subdivision thereof, or a municipal corporation of this state.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or
children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3) (q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.
Sec. 703. RCW 82.45.080 and 2010 1st sp. s. c 23 s 210 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the tax levied under this chapter is the obligation of the seller and the department may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages. The department's use of one course of enforcement is not an election not to pursue the other.

(2) When a transfer or conveyance made pursuant to a judicial or nonjudicial foreclosure of a mortgage, deed of trust, lien, or enforcement of a judgment is subject to tax under this chapter, and notwithstanding any other provisions of law, the tax levied under this chapter is the obligation of the transferee or grantee, and provisions of this chapter applicable to the seller apply to the transferee or grantee. The department may enforce the obligation against the transferee or grantee as provided in subsection (1) of this section.

(3) For purposes of this section and notwithstanding any other provisions of law, the seller is the parent corporation of a wholly owned subsidiary, when such subsidiary is the transferor to a third-party transferee and the subsidiary is dissolved before paying the tax imposed under this chapter.

NEW SECTION. Sec. 704. RCW 82.32.805 and 82.32.808 do not apply to sections 702 and 703 of this act.

PART VIII

Increasing Penalties for Late Payment of Tax Returns

Sec. 801. RCW 82.32.090 and 2011 c 24 s 3 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there is assessed a penalty of (five) eight percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of (fifteen) eighteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there
is assessed a total penalty of ((twenty-five)) twenty-eight percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant is issued by the department of revenue for the collection of taxes, increases, and penalties, there is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit
payment electronically, as provided by RCW 82.32.080, the department
must add a penalty of ten percent of the amount of the tax that
should have been reported and/or paid electronically or the
additional tax found due if there is a deficiency because of the
failure to follow the instructions. A taxpayer disregards specific
written instructions when the department has informed the taxpayer in
writing of the taxpayer's tax obligations and the taxpayer fails to
act in accordance with those instructions unless, in the case of a
deficiency, the department has not issued final instructions because
the matter is under appeal pursuant to this chapter or departmental
regulations. The department may not assess the penalty under this
section upon any taxpayer who has made a good faith effort to comply
with the specific written instructions provided by the department to
that taxpayer. A taxpayer will be considered to have made a good
faith effort to comply with specific written instructions to file
returns and/or remit taxes electronically only if the taxpayer can
show good cause, as defined in RCW 82.32.080, for the failure to
comply with such instructions. A taxpayer will be considered to have
willfully disregarded the requirement to file returns or remit
payment electronically if the department has mailed or otherwise
delivered the specific written instructions to the taxpayer on at
least two occasions. Specific written instructions may be given as a
part of a tax assessment, audit, determination, closing agreement, or
other written communication, provided that such specific written
instructions apply only to the taxpayer addressed or referenced on
such communication. Any specific written instructions by the
department must be clearly identified as such and must inform the
taxpayer that failure to follow the instructions may subject the
taxpayer to the penalties imposed by this subsection. If the
department determines that it is necessary to provide specific
written instructions to a taxpayer that does not comply with the
requirement to file returns or remit payment electronically as
provided in RCW 82.32.080, the specific written instructions must
provide the taxpayer with a minimum of forty-five days to come into
compliance with its electronic filing and/or payment obligations
before the department may impose the penalty authorized in this
subsection.

(6) If the department finds that all or any part of a deficiency
resulted from engaging in a disregarded transaction, as described in
RCW 82.32.655(3), the department must assess a penalty of thirty-five
percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under RCW 82.32.655(2). The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under RCW 82.32.655(3), the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due must be added.

(8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(9) The department may not impose the evasion penalty in combination with the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

(10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date.

NEW SECTION. Sec. 802. Section 801 of this act applies beginning with tax returns due on or after the effective date of this section.

PART IX

Requiring Local Governments that Issue Building Permits to Supply Contractor Information to the Department of Revenue

Sec. 901. RCW 18.27.110 and 1997 c 314 s 11 are each amended to read as follows:

(1)(a) No city, town or county (shall) may issue a construction building permit for work which is to be done by any contractor
required to be registered under this chapter without verification
((that such contractor is currently registered as required by law.
When such verification is made, nothing contained in this section is
intended to be, nor shall be construed to create, or form the basis
for any liability under this chapter on the part of any city, town or
county, or its officers, employees or agents. However, failure to
verify the contractor registration number results in liability to the
city, town, or county to a penalty to be imposed according to RCW
18.27.100(7)(a)) of the contractor's unified business identifier
number and that such contractor is currently registered as required
by law. Information regarding the contractor must be obtained at the
time the building permit is applied for. The requirement in this
subsection (1)(a) to verify a contractor's registration and unified
business identifier number does not apply with respect to
subcontractors.

(b)(i) When a general contractor, including a property owner
acting as a general contractor, requests a final inspection, the
city, town, or county that issued the building permit must request
from the general contractor the name, unified business identifier
number, and contractor registration number of any subcontractors that
performed any portion of the work under the building permit. The
department of revenue must develop a form for this purpose and make
it available, at no cost, to the cities, towns, and counties.

(ii) Cities, towns, and counties may charge general contractors
and property owners acting as a general contractor a fee of five
dollars to defray the cost of collecting the information required in
this subsection (1)(b) and providing the information to the
department of revenue as required in (f) of this subsection (1).

(iii) This subsection (1)(b) only applies with respect to
construction on single-family dwellings and multifamily residential
buildings as defined in RCW 19.27.015.

(c) A general contractor or building permit applicant must
provide a city, town, or county with complete and accurate
information about the contractor and any subcontractors as requested
by the city, town, or county pursuant to (a) and (b) of this
subsection (1).

(d) When the verification is made and the information requested,
as required in (a) and (b) of this subsection (1), nothing contained
in this section is intended to be, nor shall be construed to create,
or form the basis for any liability under this chapter on the part of any city, town, or county, or its officers, employees, or agents.

(e) However, failure to comply with the provisions of (a) and (b) of this subsection (1) results in liability to the city, town, or county to a penalty to be imposed according to RCW 18.27.100(8)(a).

(f) Cities, towns, and counties must furnish the information collected pursuant to (a) and (b) of this subsection (1) to the department of revenue monthly at no charge to the department. The information must be provided in a format requested by the department. The department of revenue must, upon request, share such information with the department of labor and industries and the employment security department.

(2) At the time of issuing the building permit, all cities, towns, or counties are responsible for:

(a) Printing the contractor registration number on the building permit; and

(b) Providing a written notice to the building permit applicant informing them of contractor registration laws and the potential risk and monetary liability to the homeowner for using an unregistered contractor.

(3) If a building permit is obtained by an applicant or contractor who falsifies information to obtain an exemption provided under RCW 18.27.090 or who violates subsection (1)(c) of this section by providing materially incomplete or inaccurate information to a city, town, or county, the building permit ((shall)) must be forfeited.

Sec. 902. RCW 18.27.200 and 2007 c 436 s 9 are each amended to read as follows:

(1) It is a violation of this chapter and an infraction for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended or revoked;

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor;
(d) If the contractor is a contractor as defined in RCW 18.106.010, violate RCW 18.106.320; ((or))
(e) Subcontract to, or use, an unregistered contractor; or
(f) Provide materially incomplete or inaccurate information to a city, town, or county pursuant to a request for information as required by RCW 18.27.110.

(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction.

**PART X**
**Transfers to Education Legacy Trust Account**

**NEW SECTION. Sec. 1001.** A new section is added to chapter 82.32 RCW to read as follows:

(1) By the last workday of the second and fourth calendar quarters, the state treasurer must transfer the amount specified in subsection (2) of this section from the general fund to the education legacy trust account. The first transfer under this subsection (1) must occur by December 31, 2015.

(2) By December 15th and by June 15th of each year, the department must estimate the increase in state general fund revenues from the changes made under parts I through IX of this act for the current and prior calendar quarters and notify the state treasurer of the increase.

**NEW SECTION. Sec. 1002.** A new section is added to chapter 43.135 RCW to read as follows:

RCW 43.135.034(4) does not apply to the transfers under section 1001 of this act.

**NEW SECTION. Sec. 1003.** A new section is added to chapter 39.42 RCW to read as follows:

The purpose of repealing or narrowing tax preferences and increasing late payment penalties for not reporting excise taxes in a
timely manner in this act is to support education-related expenditures from the education legacy trust account. For this reason, general state revenues transferred to the education legacy trust account under section 1001 of this act are excluded from the calculation of general state revenues for purposes of Article VIII, section 1 of the state Constitution and RCW 39.42.130 and 39.42.140.

Sec. 1004. RCW 83.100.230 and 2012 1st sp.s. c 10 s 7 are each amended to read as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for support of the common schools, for support of early learning programs, and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts.

PART XI
Appropriations

NEW SECTION. Sec. 1101. FOR THE SECRETARY OF STATE

General Fund—State Appropriation (FY 2016) . . . . . . . . . . . . . . $771,000
General Fund—State Appropriation (FY 2017) . . . . . . . . . . . . . . $772,000
TOTAL APPROPRIATION. . . . . . . . . . . . . . . . . . . . . . . . . . . $1,543,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations are provided solely for the state library to purchase statewide online access to the information technology academy to allow public access to online courses and learning resources through public libraries.

NEW SECTION. Sec. 1102. FOR THE DEPARTMENT OF REVENUE

General Fund—State Appropriation (FY 2016) . . . . . . . . . . . . . . $6,270,000
General Fund—State Appropriation (FY 2017) . . . . . . . . . . . . . . $5,099,000
TOTAL APPROPRIATION. . . . . . . . . . . . . . . . . . . . . . . . . . . $11,369,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations are provided solely for the implementation of legislation impacting the department.
NEW SECTION.  Sec. 1103.  FOR THE SUPERINTENDENT OF PUBLIC
INSTRUCTION
Education Legacy Trust Account—State Appropriation . . . . $4,867,000

The appropriation in this section is subject to the following conditions and limitations:

(1) $1,000,000 of the general fund—state appropriation for fiscal year 2016 and $1,000,000 of the general fund—state appropriation for fiscal year 2017 are provided solely for the implementation of the computer science and education grant program, adopted pursuant to chapter 3, Laws of 2015 1st sp. sess. (Substitute House Bill No. 1813) (computer science).

(2) $674,000 of the general fund—state appropriation for fiscal year 2016 and $1,485,000 of the general fund—state appropriation for fiscal year 2017 are provided solely for the Washington state achievers scholarship and Washington higher education readiness program. The funds shall be used to: (a) Support community involvement officers that recruit, train, and match community volunteer mentors with students selected as achievers scholars; and (b) identify and reduce barriers to college for low-income and underserved middle and high school students.

(3) $354,000 of the general fund—state appropriation for fiscal year 2016 and $354,000 of the general fund—state appropriation for fiscal year 2017 are provided solely for contracting with a college scholarship organization with expertise in conducting outreach to students concerning eligibility for the Washington college bound scholarship consistent with chapter 405, Laws of 2007.

NEW SECTION.  Sec. 1104.  FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—EDUCATION REFORM PROGRAMS
Education Legacy Trust Account—State Appropriation . . . . $2,000,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely for a statewide information technology (IT) academy program. This public-private partnership will provide educational software, as well as IT certification and software training opportunities for students and staff in public middle schools.
NEW SECTION. Sec. 1105. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—BASIC EDUCATION EMPLOYEE COMPENSATION

(1) The LEAP documents and tables in this section supersede the LEAP documents and tables in section 503, chapter . . . (Engrossed House Bill No. 1106), Laws of 2015 2nd sp. sess.

(2) For the purposes of the section:

(a) "LEAP Document 1" means the staff mix factors for certificated instructional staff according to education and years of experience, as developed by the legislative evaluation and accountability program committee on June 19, 2015, at 12:15 hours; and

(b) "LEAP Document 2" means the school year salary allocations for certificated administrative staff and classified staff and derived and total base salaries for certificated instructional staff as developed by the legislative evaluation and accountability program committee on June 19, 2015, at 12:15 hours.

(3) Pursuant to RCW 28A.150.410, the following state-wide salary allocation schedules for certificated instructional staff are established for basic education salary allocations:

[PLACEHOLDER]

NEW SECTION. Sec. 1106. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL EMPLOYEE COMPENSATION ADJUSTMENTS

Education Legacy Trust Account—State Appropriation . . . $152,294,000

The appropriation in this section is subject to the following conditions and limitations: When added to amounts provided in section 504, chapter . . . (Engrossed House Bill No. 1106), Laws of 2015 2nd sp. sess. for Initiative Measure No. 732 salary percentage increases of 1.8 percent effective September 1, 2015, and 1.2 percent effective September 1, 2016, the amount in this section is sufficient to provide total salary increase percentages of 3.0 percent effective September 1, 2015, and 1.8 percent effective September 1, 2016.

NEW SECTION. Sec. 1107. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR LOCAL EFFORT ASSISTANCE

For purposes of RCW 84.52.0531, the increase per full-time equivalent student is 3.17 percent from the 2015-16 to the 2016-17 school year. This amount supersedes the increase specified in section
509, chapter . . . (Engrossed House Bill No. 1106), Laws of 2015 2nd sp. sess.

**NEW SECTION.**  **Sec. 1108.**

Table Of Total Base Salaries For Certificated Instructional Staff

For School Year 2015-16

*** Education Experience ***

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Table Of Total Base Salaries For Certificated Instructional Staff

For School Year 2016-17

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<td>60,532</td>
<td>64,429</td>
<td>67,288</td>
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NEW SECTION. **Sec. 1109. FOR THE STUDENT ACHIEVEMENT COUNCIL—OFFICE OF STUDENT FINANCIAL ASSISTANCE**

Education Legacy Trust Account—State Appropriation . . . $24,000,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely to meet state match requirements associated with the opportunity scholarship program.

NEW SECTION. **Sec. 1110. FOR THE DEPARTMENT OF EARLY LEARNING**

Education Legacy Trust Account—State Appropriation. . . . $28,250,000

The appropriation in this section is subject to the following conditions and limitations:
(1) $24,250,000 of the appropriation is provided solely for the early childhood education and assistance program. This amount shall support at least 1,600 slots in fiscal year 2016 and 1,600 slots in fiscal year 2017.

(2) $4,000,000 of the appropriation is provided solely for early intervention assessment and services.

NEW SECTION. Sec. 1111. FOR THE UNIVERSITY OF WASHINGTON

Education Legacy Trust Account—State Appropriation . . . $38,084,000
State Building Construction Account Appropriation . . . . $32,000,000
TOTAL APPROPRIATION. . . . . . . . . . . . . . . . $70,084,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $12,000,000 of the education legacy trust account—state appropriation is provided solely for the expansion of degrees in the department of computer science and engineering at the Seattle campus.

(2) $8,000,000 of the education legacy trust account—state appropriation is provided solely for the family medicine residency network at the university to expand the number of residency slots available in Washington.

(3) $18,084,000 of the education legacy trust account—state appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the university.

(4) $32,000,000 of the state building construction account appropriation is provided solely to create expansion space for the university's computer science and engineering program.

NEW SECTION. Sec. 1112. FOR THE WASHINGTON STATE UNIVERSITY

Education Legacy Trust Account—State Appropriation . . . $12,849,000

The appropriation in this section is subject to the following conditions and limitations:

(1) $2,500,000 of the appropriation is provided solely for the university to establish a medical school.

(2) $10,349,000 of the appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the university.

NEW SECTION. Sec. 1113. FOR THE EASTERN WASHINGTON UNIVERSITY

Education Legacy Trust Account—State Appropriation . . . . $3,228,000
The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the university.

NEW SECTION. Sec. 1114. FOR THE CENTRAL WASHINGTON UNIVERSITY Education Legacy Trust Account—State Appropriation . . . . $2,806,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the university.

NEW SECTION. Sec. 1115. FOR THE EVERGREEN STATE COLLEGE Education Legacy Trust Account—State Appropriation . . . . $1,393,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the college.

NEW SECTION. Sec. 1116. FOR THE WESTERN WASHINGTON UNIVERSITY Education Legacy Trust Account—State Appropriation . . . . $4,178,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided to freeze resident undergraduate tuition and provide additional state support to the university.

NEW SECTION. Sec. 1117. FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES Education Legacy Trust Account—State Appropriation . . . . $17,109,000

The appropriation in this section is subject to the following conditions and limitations:

(1) $2,500,000 of the appropriation is provided solely for the expansion of the mathematics, engineering, and science achievement program. The state board shall report back to the appropriate committees of the legislature on the number of campuses and students served by December 31, 2018.
(2) $14,609,000 of the appropriation is provided to freeze resident tuition and provide additional state support for the community and technical colleges.

NEW SECTION. Sec. 1118. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR DEBT SUBJECT TO THE DEBT LIMIT

General Fund—State Appropriation (FY 2016) ......... $3,955,000
General Fund—State Appropriation (FY 2017) ......... $32,845,000
Columbia River Basin Water Supply Development Account—State Appropriation. ...................... $24,000
State Taxable Building Construction Account—State Appropriation. ........................................ $262,000
Columbia River Basin Taxable Bond Water Supply Development Account—State Appropriation. ......... $53,000
TOTAL APPROPRIATION. ................................. $37,139,000

The appropriations in this section support capital budget appropriations for the 2015-2017 fiscal biennium and are subject to the following conditions and limitations: The general fund appropriations are for expenditure into the debt-limit general fund bond retirement account.

NEW SECTION. Sec. 1119. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES

Columbia River Basin Water Supply Development Account—State Appropriation. ...................... $6,000
State Taxable Building Construction Account—State Appropriation. ........................................ $53,000
Columbia River Basin Taxable Bond Water Supply Development Account—State Appropriation. ......... $11,000
TOTAL APPROPRIATION. ................................. $70,000

PART XII
Miscellaneous Technical Provisions

NEW SECTION. Sec. 1201. If any provision of this act or its application to any person or circumstance is held invalid, the
remainder of the act or the application of the provision to other
persons or circumstances is not affected.

NEW SECTION. Sec. 1202. (1) Except as provided otherwise in
this section, this act is necessary for the immediate preservation of
the public peace, health, or safety, or support of the state
government and its existing public institutions, and takes effect
August 1, 2015.

(2) Section 1004 of this act and part XI of this act are
necessary for the immediate preservation of the public peace, health,
or safety, or support of the state government and its existing public
institutions, and take effect July 1, 2015.

(3) Parts I, VI, and VII of this act are necessary for the
immediate preservation of the public peace, health, or safety, or
support of the state government and its existing public institutions,
and take effect September 1, 2015.

(End of Bill)
STATE TREASURER

BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES .......................... 43
BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR DEBT SUBJECT TO THE DEBT LIMIT ........ 43

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