

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1257

Chapter 368, Laws of 1997

55th Legislature
1997 Regular Session

COAL-FIRED THERMAL ELECTRICAL GENERATION FACILITIES--ASSISTANCE
FOR POLLUTION CONTROL AND ABATEMENT

EFFECTIVE DATE: 5/15/97

Passed by the House April 19, 1997
Yeas 89 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1997
Yeas 44 Nays 0

BRAD OWEN
President of the Senate

Approved May 15, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1257** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 15, 1997 - 11:43 a.m.

**Secretary of State
State of Washington**

1 that such plants may continue to play a long-term vital economic role
2 in the communities where they are located.

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

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

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

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

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

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

23 (a) Incurred for air pollution control facilities constructed or
24 installed after the effective date of this act and used in a thermal
25 electric generation facility placed in operation after December 31,
26 1969, and before July 1, 1975;

27 (b) If the air pollution control facilities are constructed or
28 installed to meet applicable regulatory requirements established under
29 state or federal law, including the Washington clean air act, chapter
30 70.94 RCW; and

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

36 (4) This section does not apply to sales of tangible personal
37 property purchased or to sales of, costs of, or charges made for labor

1 and services used for maintenance or repairs of pollution control
2 equipment.

3 (5) If production of electricity at a thermal electric generation
4 facility for any calendar year after 2002 and before 2023 falls below
5 a twenty percent annual capacity factor for the generation facility,
6 all or a portion of the tax previously exempted under this section in
7 respect to construction or installation of air pollution control
8 facilities at the generation facility shall be due as follows:

9		Portion of previously
10	Year event occurs	exempted tax due
11	2003	100%
12	2004	95%
13	2005	90%
14	2006	85%
15	2007	80%
16	2008	75%
17	2009	70%
18	2010	65%
19	2011	60%
20	2012	55%
21	2013	50%
22	2014	45%
23	2015	40%
24	2016	35%
25	2017	30%
26	2018	25%
27	2019	20%
28	2020	15%
29	2021	10%
30	2022	5%
31	2023	0%

32 (6) Section 12 of this act applies to this section.

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

35 (1) For the purposes of this section, "air pollution control
36 facilities" mean any treatment works, control devices and disposal
37 systems, machinery, equipment, structures, property, property

1 improvements, and accessories, that are installed or acquired for the
2 primary purpose of reducing, controlling, or disposing of industrial
3 waste that, if released to the outdoor atmosphere, could cause air
4 pollution, or that are required to meet regulatory requirements
5 applicable to their construction, installation, or operation.

6 (2) The provisions of this chapter do not apply in respect to the
7 use of air pollution control facilities installed and used by a light
8 and power business, as defined in RCW 82.16.010, in generating electric
9 power.

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

12 (a) Constructed or installed after the effective date of this act
13 and used in a thermal electric generation facility placed in operation
14 after December 31, 1969, and before July 1, 1975; and

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

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

20 (5) If production of electricity at a thermal electric generation
21 facility for any calendar year after 2002 and before 2023 falls below
22 a twenty percent annual capacity factor for the generation facility,
23 all or a portion of the tax previously exempted under this section in
24 respect to construction or installation of air pollution control
25 facilities at the generation facility shall be due according to the
26 schedule provided in section 2(5) of this act.

27 (6) Section 12 of this act applies to this section.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW
29 to read as follows:

30 (1) For the purposes of this section:

31 (a) "Air pollution control facilities" means any treatment works,
32 control devices and disposal systems, machinery, equipment, structure,
33 property, property improvements, and accessories, that are installed or
34 acquired for the primary purpose of reducing, controlling, or disposing
35 of industrial waste that, if released to the outdoor atmosphere, could
36 cause air pollution, or that are required to meet regulatory
37 requirements applicable to their construction, installation, or
38 operation; and

1 (b) "Generation facility" means a coal-fired thermal electric
2 generation facility placed in operation after December 3, 1969, and
3 before July 1, 1975.

4 (2) Beginning January 1, 1999, the tax levied by RCW 82.08.020 does
5 not apply to sales of coal used to generate electric power at a
6 generation facility operated by a business if the following conditions
7 are met:

8 (a) The owners must make an application to the department of
9 revenue for a tax exemption;

10 (b) The owners must make a demonstration to the department of
11 ecology that the owners have made reasonable initial progress to
12 install air pollution control facilities to meet applicable regulatory
13 requirements established under state or federal law, including the
14 Washington clean air act, chapter 70.94 RCW;

15 (c) Continued progress must be made on the development of air
16 pollution control facilities to meet the requirements of the permit;
17 and

18 (d) The generation facility must emit no more than ten thousand
19 tons of sulfur dioxide during a previous consecutive twelve-month
20 period.

21 (3) During a consecutive twelve-month period, if the generation
22 facility is found to be in violation of excessive sulfur dioxide
23 emissions from a regional air pollution control authority or the
24 department of ecology, the department of ecology shall notify the
25 department of revenue and the owners of the generation facility shall
26 lose their tax exemption under this section. The owners of a
27 generation facility may reapply for the tax exemption when they have
28 once again met the conditions of subsection (2)(d) of this section.

29 (4) Section 12 of this act applies to this section.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.08 RCW
31 to read as follows:

32 Any business that has received a tax exemption under section 4 of
33 this act forfeits the exemption if, except for reasons or factors
34 beyond the control of the owners or operator of the thermal electric
35 generation facility, less than seventy percent of the coal consumed at
36 the thermal electric generation facility during the previous calendar
37 year was produced by a mine located in the same county as the facility
38 or in a county contiguous to the county. The department of revenue may

1 reinstate the exemption under section 4 of this act when the owners
2 provide documentation that the seventy-percent requirement has been met
3 during a subsequent calendar year. The definitions in section 4 of
4 this act apply to this section.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.12 RCW
6 to read as follows:

7 (1) For the purposes of this section:

8 (a) "Air pollution control facilities" means any treatment works,
9 control devices and disposal systems, machinery, equipment, structure,
10 property, property improvements, and accessories, that are installed or
11 acquired for the primary purpose of reducing, controlling, or disposing
12 of industrial waste that, if released to the outdoor atmosphere, could
13 cause air pollution, or that are required to meet regulatory
14 requirements applicable to their construction, installation, or
15 operation; and

16 (b) "Generation facility" means a coal-fired thermal electric
17 generation facility placed in operation after December 3, 1969, and
18 before July 1, 1975.

19 (2) Beginning January 1, 1999, the provisions of this chapter do
20 not apply in respect to the use of coal to generate electric power at
21 a generation facility operated by a business if the following
22 conditions are met:

23 (a) The owners must make an application to the department of
24 revenue for a tax exemption;

25 (b) The owners must make a demonstration to the department of
26 ecology that the owners have made reasonable initial progress to
27 install air pollution control facilities to meet applicable regulatory
28 requirements established under state or federal law, including the
29 Washington clean air act, chapter 70.94 RCW;

30 (c) Continued progress must be made on the development of air
31 pollution control facilities to meet the requirements of the permit;
32 and

33 (d) The generation facility must emit no more than ten thousand
34 tons of sulfur dioxide during a previous consecutive twelve-month
35 period.

36 (3) During a consecutive twelve-month period, if the generation
37 facility is found to be in violation of excessive sulfur dioxide
38 emissions from a regional air pollution control authority or the

1 department of ecology, the department of ecology shall notify the
2 department of revenue and the owners of the generation facility shall
3 lose their tax exemption under this section. The owners of a
4 generation facility may reapply for the tax exemption when they have
5 once again met the conditions of subsection (2)(d) of this section.

6 (4) Section 12 of this act applies to this section.

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

9 Any business that has received a tax exemption under section 6 of
10 this act forfeits the exemption if, except for reasons or factors
11 beyond the control of the owners or operator of the thermal electric
12 generation facility, less than seventy percent of the coal consumed at
13 the thermal electric generation facility during the previous calendar
14 year was produced by a mine located in the same county as the facility
15 or in a county contiguous to the county. The department of revenue may
16 reinstate the exemption under section 6 of this act when the owners
17 provide documentation that the seventy-percent requirement has been met
18 during a subsequent calendar year. The definitions in section 6 of
19 this act apply to this section.

20 **Sec. 8.** RCW 43.79A.040 and 1996 c 253 s 409 are each amended to
21 read as follows:

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

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

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

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

4 (b) The following accounts and funds shall receive their
5 proportionate share of earnings based upon each account's or fund's
6 average daily balance for the period: The agricultural local fund, the
7 American Indian scholarship endowment fund, the Washington
8 international exchange scholarship endowment fund, the energy account,
9 the fair fund, the game farm alternative account, the grain inspection
10 revolving fund, the rural rehabilitation account, ~~((and))~~ the self-
11 insurance revolving fund, and the sulfur dioxide abatement account.
12 However, the earnings to be distributed shall first be reduced by the
13 allocation to the state treasurer's service fund pursuant to RCW
14 43.08.190.

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

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

24 NEW SECTION. Sec. 9. A new section is added to chapter 82.32 RCW
25 to read as follows:

26 An amount equal to all sales and use taxes paid under chapters
27 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal
28 to, or use of coal by, a business for use at a generation facility, and
29 that meet the requirements of section 10 of this act, shall be
30 deposited in the sulfur dioxide abatement account under section 10 of
31 this act.

32 NEW SECTION. Sec. 10. A new section is added to chapter 70.94 RCW
33 to read as follows:

34 (1) The sulfur dioxide abatement account is created. All receipts
35 from subsection (2) of this section must be deposited in the account.
36 Expenditures in the account may be used only for the purposes of
37 subsection (3) of this section. Only the director of revenue or the

1 director's designee may authorize expenditures from the account. The
2 account is subject to allotment procedures under chapter 43.88 RCW, but
3 an appropriation is not required for expenditures.

4 (2) Upon application by the owners of a generation facility, the
5 department of ecology shall make a determination of whether the owners
6 are making initial progress in the construction of air pollution
7 control facilities. Evidence of initial progress may include, but is
8 not limited to, engineering work, agreements to proceed with
9 construction, contracts to purchase, or contracts for construction of
10 air pollution control facilities. However, if the owners' progress is
11 impeded due to actions caused by regulatory delays or by defensive
12 litigation, certification of initial progress may not be withheld.

13 Upon certification of initial progress by the department of ecology
14 and after January 1, 1999, an amount equal to all sales and use taxes
15 paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained
16 from the sales of coal to, or use of coal by, a business for use at a
17 generation facility shall be deposited in the account under section 9
18 of this act.

19 By June 1st of each year during construction of the air pollution
20 control facilities and during the verification period required in
21 sections 4(2)(d) and 6(2)(d) of this act, the department of ecology
22 shall make an assessment regarding the continued progress of the
23 pollution control facilities. Evidence of continued progress may
24 include, but is not limited to, acquisition of construction material,
25 visible progress on construction, or other actions that have occurred
26 that would verify progress under general construction time tables. The
27 treasurer shall continue to deposit an amount equal to the tax revenues
28 to the sulfur dioxide abatement account unless the department of
29 ecology fails to certify that reasonable progress has been made during
30 the previous year. The operator of a generation facility shall file
31 documentation accompanying its combined monthly excise tax return that
32 identifies all sales and use tax payments made by the owners for coal
33 used at the generation facility during the reporting period.

34 (3) When a generation facility emits no more than ten thousand tons
35 of sulfur dioxide during a consecutive twelve-month period, the
36 department of ecology shall certify this to the department of revenue
37 and the state treasurer by the end of the following month. Within
38 thirty days of receipt of certification under this subsection, the
39 department of revenue shall approve the tax exemption application and

1 the director or the director's designee shall authorize the release of
2 any moneys in the sulfur dioxide abatement account to the operator of
3 the generation facility. The operator shall disburse the payment among
4 the owners of record according to the terms of their contractual
5 agreement.

6 (4)(a) If the department of revenue has not approved a tax
7 exemption under sections 4 and 6 of this act by March 1, 2005, any
8 moneys in the sulfur dioxide abatement account shall be transferred to
9 the general fund and the appropriate local governments in accordance
10 with chapter 82.14 RCW, and the sulfur dioxide abatement account shall
11 cease to exist after March 1, 2005.

12 (b) The dates in (a) of this subsection must be extended if the
13 owners of a generation facility have experienced difficulties in
14 complying with this section, or sections 4 through 7 and 9 of this act,
15 due to actions caused by regulatory delays or by defensive litigation.

16 (5) For the purposes of this section:

17 (a) "Air pollution control facilities" means any treatment works,
18 control devices and disposal systems, machinery, equipment, structure,
19 property, property improvements and accessories, that are installed or
20 acquired for the primary purpose of reducing, controlling, or disposing
21 of industrial waste that, if released to the outdoor atmosphere, could
22 cause air pollution, or that are required to meet regulatory
23 requirements applicable to their construction, installation, or
24 operation; and

25 (b) "Generation facility" means a coal-fired thermal electric
26 generation facility placed in operation after December 3, 1969, and
27 before July 1, 1975.

28 NEW SECTION. Sec. 11. A new section is added to chapter 84.36 RCW
29 to read as follows:

30 (1) Air pollution control equipment constructed or installed after
31 the effective date of this act, by businesses engaged in the generation
32 of electric energy at thermal electric generation facilities first
33 placed in operation after December 31, 1969, and before July 1, 1975,
34 shall be exempt from property taxation. The owners shall maintain the
35 records in such a manner that the annual beginning and ending asset
36 balance of the pollution control facilities and depreciation method can
37 be identified.

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

9 (3) Section 12 of this act applies to this section.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.32 RCW
11 to read as follows:

12 If a business is allowed an exemption under section 2, 3, 4, 6, or
13 11 of this act, and the business ceases operation of the facility for
14 which the exemption is allowed, the business shall deposit into the
15 displaced workers account established in section 13 of this act an
16 amount equal to the fair market value of one-quarter of the total
17 sulfur dioxide allowances authorized by federal law available to the
18 facility at the time of cessation of operation of the generation
19 facility as if the allowances were sold for a period of ten years
20 following the time of cessation of operation of the generation
21 facility. This section expires December 31, 2015.

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 50.12 RCW
23 to read as follows:

24 The displaced workers account is established. All moneys from
25 section 12 of this act must be deposited into the account. Moneys in
26 the account may be spent only after appropriation. Expenditures from
27 the account may be used only to provide for compensation and retraining
28 of displaced workers of the thermal electric generation facility and of
29 the coal mine that supplied coal to the facility. The benefits from
30 the account are in addition to all other compensation and retraining
31 benefits to which the displaced workers are entitled under existing
32 state law. The employment security department shall administer the
33 distribution of moneys from the account.

34 **Sec. 14.** RCW 80.04.130 and 1993 c 311 s 1 are each amended to read
35 as follows:

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

30 For the purposes of this section, tariffs for the following
31 telecommunications services, that temporarily waive or reduce charges
32 for existing or new subscribers for a period not to exceed sixty days
33 in order to promote the use of the services shall be considered tariffs
34 that decrease rates, charges, rentals, or tolls:

- 35 (a) Custom calling service;
- 36 (b) Second access lines; or
- 37 (c) Other services the commission specifies by rule.

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

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

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

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

26 (4) The implementation of Washington telephone assistance program
27 service is a major policy change in available telecommunications
28 service. The implementation of Washington telephone assistance program
29 service will aid in achieving the stated goal of universal telephone
30 service.

31 (5) If a utility claims a sales or use tax exemption on the
32 pollution control equipment for an electrical generation facility and
33 abandons the generation facility before the pollution control equipment
34 is fully depreciated, any tariff filing for a rate increase to recover
35 abandonment costs for the pollution control equipment shall be
36 considered unjust and unreasonable for the purposes of this section.

37 NEW SECTION. **Sec. 15.** The department of revenue and the
38 department of ecology may adopt rules to implement this act.

1 NEW SECTION. **Sec. 16.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

 Passed the House April 19, 1997.

 Passed the Senate April 11, 1997.

 Approved by the Governor May 15, 1997.

 Filed in Office of Secretary of State May 15, 1997.