

HOUSE BILL REPORT

HB 1088

As Passed House:

March 5, 2009

Title: An act relating to prospectively clarifying the measure of the taxes imposed on public utility districts as provided in chapter 54.28 RCW.

Brief Description: Clarifying prospectively the measure of the taxes imposed on public utility districts as provided in chapter 54.28 RCW.

Sponsors: Representative Hunter; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/13/09, 2/3/09 [DP].

Floor Activity

Passed House: 3/5/09, 61-35.

Brief Summary of Bill

- Applies the Public Utility District Privilege tax to all charges for sale of electricity including any recurring charges that are billed to consumers as a condition for receiving electricity.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; and Condotta.

Staff: Rick Peterson (786-7150)

Background:

Public Utility Districts (PUDs) were created to provide water and electricity, and to conserve water and power resources. Currently, there are 28 PUDs: 23 provide electricity services; 14

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provide water or water and wastewater service; and 13 offer wholesale broadband telecommunications service. The powers of a PUD are executed by a board of three or five elected commissioners.

The PUDs that generate, transmit, or distribute electricity are subject to the public utility district privilege tax. The tax is intended to be in lieu of property tax, since public utility districts are governmental entities and do not pay property taxes.

The PUD privilege tax includes three separate tax bases: electricity that is distributed to PUD customers; electricity that is generated by PUDs at hydroelectric and other facilities; and electricity that is generated by thermonuclear facilities on federal lands, which applies specifically to the nuclear generation facility operated on the Hanford reservation by Energy Northwest. On electricity distributed to retail PUD customers, the tax rate is 2.14 percent of the gross revenue received from the retail sales. On electricity that is generated, the tax rate is equal to 5.35 percent of the first 0.4 cents of wholesale value of each kilowatt-hour of electricity. On electricity that is generated by the Energy Northwest's Columbia Generating Station at Hanford, the tax rate is 1.605 percent of the wholesale value of the electricity.

The PUD privilege tax is administered by the Department of Revenue (Department). Tax receipts are shared with local governments and are distributed to local governments under a formula that recognizes where electricity is sold and the location where generating facilities are located. In Fiscal Year 2008, \$23 million was distributed to local governments. The state received \$19 million.

The tax is based on the amount received from the sale of electricity. A recent lower court case has upheld the request for refund of tax by two PUDs that separate their kilowatt-hour charges from the charge to recoup the costs of providing service regardless of whether any electricity is used (e.g. meter reading, billing, and fixed facilities). These PUDs argue that tax should be paid only on the kilowatt-hour charge. It has been the Department's interpretation that the tax applies to the entire amount received.

Summary of Bill:

The Public Utility District Privilege tax applies to all charges for sale of electricity including any recurring charges that are billed to consumers as a condition for receiving electricity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill reaffirms the Department of Revenue's long-standing practice of using "gross revenue," including any fees, for privilege tax calculation of PUDs. It will provide for consistent taxation across PUDs. It will reduce confusion and clarify the original legislative intent of the privilege tax.

(Opposed) None.

Persons Testifying: Representative Hunter, prime sponsor; and Drew Shirk, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.