

# HOUSE BILL REPORT

## SHB 1257

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### As Amended by the Senate

**Title:** An act relating to the taxation of coal-fired thermal electric generating facilities placed in operation before July 1, 1975.

**Brief Description:** Providing tax exemptions and credits for coal-fired thermal electric generating facilities placed in operation before July 1, 1975.

**Sponsors:** By House Committee on Finance (originally sponsored by Representatives DeBolt, Alexander, Pennington, Sheldon, Kessler, Poulsen, McMorris, Mielke, Van Luvan, Grant, Crouse, Mastin, Doumit and Hatfield).

**Brief History:**

**Committee Activity:**

Energy & Utilities: 2/4/97, 2/5/97 [DP];

Finance: 3/3/97, 3/7/97 [DPS].

**Floor Activity:**

Passed House: 3/15/97, 96-0.

Senate Amended.

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### HOUSE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** Do pass. Signed by 11 members: Representatives Crouse, Chairman; DeBolt, Vice Chairman; Poulsen, Ranking Minority Member; Morris, Assistant Ranking Minority Member; Bush; Cooper; Honeyford; Kastama; Kessler; Mielke and Mulliken.

**Minority Report:** Do not pass. Signed by 1 member: Representative B. Thomas.

**Staff:** Margaret Allen (786-7110).

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives B. Thomas, Chairman; Carrell, Vice Chairman; Mulliken, Vice Chairman; Dunshee, Ranking Minority Member;

Dickerson, Assistant Ranking Minority Member; Boldt; Butler; Conway; Kastama; Mason; Morris; Pennington; Schoesler and Van Luven.

**Staff:** Linda Brooks,(786-7153).

**Background:** The Centralia Steam Plant and adjacent coal mine are located in Lewis County approximately five miles northeast of Centralia. PacifiCorp operates the steam plant and owns the largest share, 47.5 percent. Other owners include Washington Water Power (15.0 percent), Seattle City Light, Tacoma Public Utilities, and Snohomish County PUD (each with 8.0 percent), Puget Power (7.0 percent), Grays Harbor PUD (4.0 percent), and Portland General Electric (2.5 percent). The plant has two coal-fired units capable of producing 1,300 megawatts of electricity, enough to serve Seattle.

The steam plant is the sole customer of the Centralia Coal Mine, which is operated by the Centralia Mining Company, a wholly owned subsidiary of PacifiCorp.

Together, the steam plant and coal mine employ approximately 670 people.

Air Pollution Control Requirements: The Centralia Steam Plant is the largest single source of sulfur dioxide pollution in the state. Sulfur dioxide emissions have been blamed for impairing visibility of Mount Rainier.

In the early 1990s, the federal and state clean air acts were revised to require existing industrial pollution sources to meet reasonably available control technology—standards.

In 1995, the Southwest Washington Air Pollution Control Authority issued an order requiring the Centralia Steam Plant to reduce sulfur dioxide emissions by 50 percent by the year 2001. When the order was issued, the National Park Service and the U.S. Forest Service argued greater emission reductions were needed. The Centralia plant owners then met with the National Park Service, U.S. Forest Service, U.S. Environmental Protection Agency, state Department of Ecology, Southwest Washington Air Pollution Control Agency, and the Puget Sound Air Pollution Control Agency to develop a recommendation on further emission reductions.

The final recommendation of this collaborative decision-making group was to require the Centralia Steam Plant to construct two scrubbers on site. The first scrubber would be in operation by December 31, 2001, and the second in operation by December 31, 2002, with an expected 90 percent reduction in sulfur dioxide emissions by the year 2003.

The two scrubbers reportedly are expected to cost approximately \$264 million (nominal value, estimated at \$172 million net present value).

Implementation of the agreement is contingent on the steam plant's owners receiving certain tax exemptions and credits.

Sales and Use Taxes: Sales tax is imposed on retail sales of most items of tangible personal property and some services. The state tax rate is 6.5 percent and is applied to the selling price of the article or service. In addition, local sales taxes apply. The total tax rate is between 7 percent and 8.6 percent, depending on location. Sales tax applies when items are purchased at retail in state. Sales tax is paid by the purchaser and collected by the seller.

Use tax is imposed on the use of an item in this state, when the acquisition of the item has not been subject to sales tax. Use tax applies to items purchased from sellers who do not collect sales tax, items acquired from out-of-state, and items produced by the person using the item. Use tax is equal to the sales tax rate multiplied by the value of the property used. Use tax is paid directly to the Department of Revenue.

Public Utility Tax: Public and privately-owned utilities, and certain other businesses, are subject to the public utility tax instead of the business and occupation (B&O) tax. Like the B&O tax, the public utility tax is applied to the gross receipts of the business. The principal difference between the B&O tax and public utility taxes is a higher rate schedule applied under the public utility tax. The state public utility tax rate for light and power businesses is 3.873 percent.

Rate Regulation: The Utilities and Transportation Commission regulates the rates charged by investor-owned utilities. By statute, the rates must be reasonable and just. An investor-owned utility planning to change a rate must file a tariff schedule of proposed rates and charges with the commission.

**Summary of Bill:** By providing for certain tax exemptions and credits, the Legislature seeks to assist thermal electric generating facilities placed in operation before July 1, 1975, to reduce their emissions so that the facilities continue to play vital, long-term economic roles in their communities. The new tax exemptions and credits are as follows:

Sales and Use Tax Exemptions: New sales and use tax exemptions are created for purchases of tangible personal property that becomes an ingredient or a component of new air pollution control equipment constructed at thermal electric generating facilities placed in operation before July 1, 1975. The exemptions apply to both state and local taxes. Similar sales and use tax exemptions are created for purchases of parts, labor, or services needed to construct or install the new air pollution control equipment. If this bill is enacted, these new tax exemptions may be claimed starting on the effective date of this act.

If thermal electric generating facilities are abandoned before 2023, however, all or part of the sales and use tax exemptions granted on air pollution control equipment must be repaid to the state. If facilities are abandoned in 2003, the facilities' owners must repay 100 percent of sales and use tax exemptions taken under the provisions of this act. If facilities are abandoned in 2004, the owners must repay 95 percent. For each additional year that the facilities operate, the repayment amount is reduced by 5 percent. If facilities are not abandoned until 2023 or later, the owners need not repay any sales or use tax exemptions.

Furthermore, if a company has claimed sales and use tax exemptions on the purchase of new air pollution control equipment and abandons the equipment before it has been fully depreciated, then the company cannot recover the remaining, un-depreciated value of the equipment through a tariff filing. The Utilities and Transportation Commission is instructed to view a tariff filing to recover the un-depreciated value of pollution control equipment, on which sales and use tax exemptions had previously been granted, as unjust and unreasonable.

Credit Against the Public Utility Tax: A tax credit against the state public utility tax is granted to thermal electric generating facilities placed in operation before July 1, 1975. The tax credit is equal to the amount of state and local sales and use taxes paid on coal used by the facilities, and the amount of state and local property taxes paid and associated with the new air pollution control equipment. This credit may only be claimed after the Department of Ecology certifies that thermal electric generating facilities have reduced their total emissions of sulfur dioxide below 10,000 tons per year for an entire calendar year.

However, if the Department of Ecology certifies that thermal electric generating facilities are making reasonable progress towards the installation of new air pollution control equipment, then beginning in calendar year 1999, the state treasurer will withhold an amount from the public utility taxes paid by the facilities' owners. The amount withheld will equal what the public utility tax credit would be worth, if the facilities had already reduced their total emissions below 10,000 tons. Instead of depositing the withheld amount into the state's general fund, the treasurer will deposit the money into a special sulfur dioxide abatement account.

Any amounts, plus accrued interest, in the sulfur dioxide abatement account will be paid to the owners of the thermal electric generating facilities, if the Department of Ecology certifies to the state treasurer, on or before January 31, 2005, that the facilities have emitted no more than 10,000 tons of sulfur dioxide during the previous calendar year. If the Department of Ecology cannot certify facilities as having emitted no more than 10,000 tons of sulfur dioxide during the previous calendar year by January 31, 2005, then no moneys will be paid to the facilities' owners. All moneys in the sulfur dioxide abatement account will instead be deposited into the

state's general fund. The sulfur dioxide abatement account will cease to exist after March 1, 2005.

Loss of Tax Credit: After thermal electric generating facilities have reduced their emissions below 10,000 tons of sulfur dioxide per year, the owners of the facilities may directly credit sales and use taxes paid on coal and property taxes paid on new air pollution control equipment against their public utility tax obligations. However, if the facilities receive a notice of violation for excessive sulfur dioxide emissions from a regional air pollution control authority or the Department of Ecology, then the owners of the facilities lose their tax credit for a one-year period.

The owners of the facilities may also lose their credit for a one-year period, if the facilities fail to use local coal. At least 70 percent of the coal used by thermal electric generating facilities must be produced by a mine located in the same county as the facilities or in a contiguous county. If the amount of local coal used falls below 70 percent, then the owners of the facilities lose their tax credit for an entire year.

The Department of Revenue may adopt rules to implement the act. If any provision of the act is found to be invalid, the finding of invalidity does not affect the other provisions.

#### **EFFECT OF SENATE AMENDMENT(S):**

Eligible Plants: The Senate eliminated two plants in Tacoma from eligibility by specifying the act does not apply to plants placed in operation prior to December 31, 1969.

Public Utility Tax Credit: The Senate eliminated the public utility tax credit.

Property Tax Exemption: Under the House version, state and local property taxes paid and associated with the newly installed air pollution control equipment were to be taken as credits against the state public utility tax. The Senate eliminated the public utility tax credits and instead exempted the new air pollution control equipment from state and local property taxes.

There is a difference in timing. The House version did not allow any credits for property taxes paid on the new air pollution control equipment until January 1, 1999. Beginning on January 1, 1999, the credits were to be taken on a deferred basis, paid into the Sulfur Dioxide Abatement Account, until a thermal electric generating facility reduced its emissions of sulfur dioxide to no more than 10,000 tons for a full calendar year. In contrast, the Senate grants property tax exemptions that begin as soon as the act goes into effect.

*Sales and Use Tax Exemptions for Coal:* Under the House version, state and local sales and use taxes paid on purchases of coal were to be taken as credits against the state public utility tax. Again, the Senate eliminated the public utility tax credit and instead created state and local sales and use tax exemptions on coal purchases.

However, in the case of the coal sales and use tax exemptions, there is no difference in timing. The House version did not allow any credits for sales and use taxes paid on coal until January 1, 1999. Beginning on January 1, 1999, the credits were to be taken on a deferred basis, paid into the Sulfur Dioxide Abatement Account, until a thermal electric generating facility reduced its emissions of sulfur dioxide to no more than 10,000 tons for a full calendar year. The Senate similarly does not allow any tax exemption benefits to accrue until January 1, 1999. If the operator of a facility has applied for sales and use tax exemptions on coal, then taxes paid on coal purchases after January 1, 1999 are deposited into the Sulfur Dioxide Abatement Account. A facility must reduce its sulfur dioxide emissions to no more than 10,000 tons for a consecutive 12-month period in order for the tax exemption application to be approved and for the moneys in the Sulfur Dioxide Abatement Account to be released to the operator of a facility.

*Local Coal Requirement:* The Senate retains the provision that a thermal electric generating facility must obtain at least 70 percent of its coal from a mine located in either the same county as the facility or in a contiguous county. If the use of local coal falls below 70 percent, then a facility loses its ability to claim sales and use tax exemptions on its purchases of coal for a period of at least one year. However, the Senate added that a facility shall not lose its sales and use tax exemptions on purchases of coal, if its failure to use local coal was due to reasons or factors beyond the control of the facility. What constitutes, "reasons or factors beyond the control," is not defined.

*Sulfur Dioxide Pollution Abatement Account:* The Senate incorporates the creation of the Sulfur Dioxide Pollution Abatement Account as a new chapter of the Washington Clean Air Act. Otherwise, the provisions governing the use of the Sulfur Dioxide Pollution Abatement Account do not differ greatly from the House version. However, the Senate allows for an extension of the March 1, 2005 deadline, if the owners of a generating facility have experienced difficulties in achieving the required emissions reductions due to actions caused by regulatory delays or by defensive litigation. Under the House version, the account was to cease to exist on March 1, 2005, and any moneys in the account were to be transferred to the state's general fund on that date.

*Displaced Workers' Account:* The Senate establishes a special Displaced Workers' Account. If a thermal electric generating facility takes advantage of the sales and use tax exemptions granted under this act but ceases operations prior to December 31, 2015, then the facility must deposit moneys into a special Displaced Workers'

Account at the time of closure. The amount of money to be deposited is computed as a fraction of the market value of the facility's sulfur dioxide pollution allowances granted under federal law. The Legislature must appropriate money from the account to provide compensation and retraining to workers displaced by a facility's closure.

Rule-Making Authority: The Senate allows the Departments of Revenue and Ecology to adopt rules as needed to implement the provisions of this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Energy & Utilities - Original Bill) The Centralia Coal Mine is the largest taxpayer in Lewis County. The closure of the Centralia Coal Mine and Steam Generating Plant would be to Lewis County what the loss of Boeing would be to King County. The jobs at risk pay well and require highly trained employees. The steam plant is a highly reliable source of electricity generation for the region. The fly ash from the plant is needed to make concrete; if the plant closes there will be an adverse ripple effect throughout the area. While the state would forego some revenues under this bill, there would be substantial investments in the state in other ways. The company has an excellent environmental record. The collaborative decision is based on the assumption the mine and plant will be competitive and remain open for 25 years if the bill passes, but there are no guarantees.

(Finance - Original Bill) This bill ensures the future of Centralia. The steam plant and coal mine are very important to the community. The plant and mine account for many family-wage jobs, with the average worker at the plant or mine earning \$55,000 per year. The plant and mine are not only major employers, but also important taxpayers. The plant and mine account for 10 percent of the total assessed valuation of property in Lewis County. In terms of the Centralia School District, the percentage is even higher. Property taxes paid by the plant and mine account for 25 percent of the district's property tax revenues.

Concerns - Original Bill: The bill does not set a time line for the installation of the pollution control equipment. The purpose of the pollution control equipment is to reduce emissions of sulfur dioxide to no more than 10,000 tons per year, but the bill does not specifically state a 10,000 ton limit. The bill also does not address what happens if the plant and/or mine becomes uneconomical and shut down early. There should be some provision made for the retraining of workers, if the workers are displaced by an early shut down.

**Testimony Against:** (Energy & Utilities - Original Bill) This bill raises policy issues such as whether public subsidies should be granted for complying with environmental laws, and whether the polluter pays– principle should be violated. The bill is too open-ended. It does not guarantee any specific reduction of pollution, and fails to take into consideration concerns about health and climatic changes. It contains no safeguards to protect taxpayers from possible windfall profits to the company or from the burden of possible future stranded costs. The bill contains no objective cost/benefit (or least-cost) analysis, and makes no provisions for workers if, or when, the facilities closes. If the bill passes, Washington will be the only state in the West that does not tax coal. A cost-effective alternative measure would be to import low-sulfur coal into the state, thus reducing emissions without requiring tax reductions.

(Finance - Original Bill) This power plant is not an efficient producer of power. As the wheeling of electricity becomes more commonplace, Centralia power will not be able to compete in the marketplace. The state should not invest in the power plant. State investments in other types of projects would do more to ensure the long-term economic health of Lewis County.

**Testified:** ( Energy & Utilities) (PRO) Representative DeBolt, prime sponsor; Ron Newbry and Rich Wooley, PacifiCorp; Rose Bowman, Lewis County; Bill Lotto, Lewis County Economic Development Council; Clinton Kurtz, Pozzolanic Northwest, Inc.; and Bruce Blaine, Superintendent, Centralia Schools. (CON) Eugene Rosalie and Nancy Holbrook, Northwest Environmental Advocates; Gary Bowers, Clean Air Coalition; and Jerry Bartlett, Burlington Northern Santa Fe.

( Finance) (Pro) Representative De Bolt, prime sponsor; Representative Alexander, secondary sponsor; Judy DeVaul, Lewis County; Ron Newbry and Rich Wooley, PacifiCorp; Joe Williams, Department of Ecology; Gordy Howins, International Union of Operating Engineers Local 612; and Bill Briggie, Superintendent, Mount Rainier National Park. (With Concerns) Eugene Rosalie, Northwest Environmental Advocates. (No Position) Anne Solwick, Department of Revenue; and Tim Ceis, Office of Financial Management. (Con) John Marshall.

**Appropriation:** None.

**Fiscal Note:** Available (original bill). Requested on March 10, 1997, for substitute bill.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.