

HOUSE BILL ANALYSIS

HB 1346

Title: *An act relating to use tax on electricity.*

Brief Description: *Imposing use tax on electricity.*

Sponsors: *Representatives B. Thomas and Crouse; by request of Department of Revenue.*

HOUSE COMMITTEE ON ENERGY & UTILITIES

Meeting Date: *February 4, 1997.*

Bill Analysis Prepared by: *Margaret Allen (786-7110).*

Background: Pressure has been mounting both inside and outside the region to open the electricity industry to market-based pricing and retail competition. Bills have been introduced in Congress to restructure the industry, and the sale of the Bonneville Power Administration (BPA) has once again been proposed. A few states, such as California, New Hampshire, and Pennsylvania, recently passed legislation restructuring their electricity industry; numerous other states are studying restructuring issues or experimenting with customer choice programs.

In 1996, the governors of Washington, Oregon, Idaho, and Montana convened a comprehensive review of the Northwest's energy system. The final report submitted by the review steering committee in December contains several recommendations regarding competition and customer choice in the electricity marketplace, including a recommendation that by July 1, 1999, all retail electric utilities (public and investor-owned) allow customers the option to choose their electricity suppliers. The local utility would be obligated to carry the power from the supplier to the customer, which the customer could buy from an alternative supplier. A transition board is now working on a strategic plan for implementing the recommendations.

In the meantime, some Washington utilities already are allowing at least some customers to choose their electricity providers.

State Public Utility Tax. The state's primary tax on businesses is the business and occupation tax. However, for light and power businesses, the state instead levies a public utility tax on the gross income received by the business. The state public utility tax rate for light and power businesses is 3.873 percent.

Cities are authorized to levy a tax on the gross income received by utilities, at a rate not exceeding 6 percent unless city voters approve a higher rate.

Sales and Use Taxes. Sales tax is imposed on most items of tangible personal property. The state sales tax rate is 6.5 percent and is applied to the selling price of the article. In addition, local sales taxes are applied to all sales subject to the state sales tax.

Sales tax applies when items are purchased at retail in the state. Use tax is imposed on the use of an item in this state when the item's acquisition was not 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. The use tax is equal to the sales tax rate.

Sales and use taxes do not apply to sales for which utilities are taxed under the public utility tax laws.

Depending on the connection (or nexus) of the electricity broker or generator to the state, electricity purchased from an out-of-state source might not be subject to public utility, business and occupation, sales, or use taxes.

BPA Sales. Since the BPA is a federal entity, BPA power sales are not subject to state or local taxation. While most of the federal power marketed by the BPA is sold wholesale, BPA is authorized to sell directly to some end users, including federal agencies in the region, public bodies (defined to include states, counties, municipalities, agencies, and political subdivisions), and direct service industries.

A direct service industrial customer (DSI) is an industrial customer that contracts with BPA for the purchase of power for direct consumption. However, only industrial customers with contracts to purchase power from the BPA on December 5, 1980 (the date of the Pacific Northwest Electric Power Planning and Conservation Act), may purchase directly from the BPA rather than a utility. The DSIs are primarily aluminum and chemical plants. Some industrial customers, such as Georgia Pacific, qualify as a DSI for part, but not all, of their electricity load.

Initiative 601. Approved by voters in November 1993, Initiative 601 requires two-thirds approval by the Legislature for any action raising state revenue or requiring a revenue-neutral tax shift.

Summary of Bill: A new use tax is imposed on the privilege of consuming electricity in the state, with a rate equal to the state public utility tax on light and power businesses. Cities are authorized to impose a new tax for the privilege of consuming electricity in the city, with a rate equal to the city public utility tax on electrical energy businesses.

Value. The value of the electricity to which the state or city use taxes apply is the amount the purchaser pays, or agrees to pay, the seller of the electricity. The value does not include amounts paid to a utility to transport the electricity to the purchaser, if those amounts are covered by the public utility taxes.

Exemptions. The new state and city use taxes do not apply to the consumption of electricity: (1) generated by a person for the person's own use; or (2) purchased from the BPA or other federal entity. In addition, the state use tax will not apply if the seller has paid the state public utility tax, and the local use tax will not apply if the seller has paid the local public utility tax, on the electricity.

Credits. Credits are allowed against the use taxes for: (1) taxes similar to Washington's state and local public utility taxes that are paid by the seller to another state; and (2) taxes similar to the use taxes imposed by this bill that are paid by the consumer to another state.

The consumer of the electricity is responsible for paying the use taxes to the Department of Revenue. The person delivering the electricity to the consumer must report quarterly to the department on the kilowatt hours of electricity delivered, the name of the consumer to whom it was delivered, and such other information as the department may require by rule.

By itself, the act does not mean that electricity is tangible personal property.

Appropriation: *None.*

Fiscal Note: *Requested January 22, 1997.*

Effective Date: *The bill takes effect August 1, 1997.*