

HOUSE BILL REPORT

EHB 2247

As Passed Legislature

Title: An act relating to the management of state energy supply and demand.

Brief Description: Managing energy supply and demand.

Sponsors: By Representatives Crouse (co-prime sponsor), Poulsen (co-prime sponsor) and Edwards.

Brief History:

Floor Activity:

Passed House: 4/20/01, 92-0.

Passed Senate: 4/20/01, 41-1.

Passed Legislature.

Brief Summary of Engrossed Bill

- The Energy Facility Site Evaluation Council (EFSEC). Raises the threshold for EFSEC jurisdiction over siting stationary thermal power plants from 250 megawatts to 350 megawatts and over floating thermal power plants from 50 megawatts to 100 megawatts. Allows any power plant using alternative energy resources to seek certification through EFSEC. Changes the mandatory membership of the council and status of the council chair.
- The direct service industrial customers (DSI). Establishes B&O tax credits, brokered natural gas use tax deferrals and public utility tax credits for new gas turbine electrical generating facilities that provide electricity for direct service industrial customers.
- The Low-income home energy assistance program (LIHEAP). Provides a credit against the public utility tax for utilities that offer new billing discounts to low-income customers, and for utilities that make contributions to agencies that administer the federal low-income energy assistance program. Establishes a limit of \$2.5 million for all utilities each fiscal year and establishes a limit of available credit for each utility based on a formula.
- Energy efficiency in public buildings. Includes the concept of energy management systems in the development of the lifecycle cost analysis for the construction and renovation of major public buildings. Encourages use of performance-based contracting that allows the cost of the project to be paid from the energy savings guaranteed by the contractor. Directs state agencies and school districts to conduct energy audits.
- Green Options. Directs each utility to provide a voluntary option to customers to purchase electricity from alternative energy resources beginning January 1, 2002.
- Joint Committee on Energy and Utilities. Changes the name and membership eligibility for the Joint Committee on Energy and Utilities that meets during an energy supply alert or energy emergency issued by the Governor.
- Peaking Plants. Allows a sales and use tax exemption for air pollution control equipment acquired or installed by a light and power business at gas-fired thermal electrical generation facilities placed into service between 1978 and 1984 that are operating subject to pollution control limits.

Majority/Minority Report: None.

Staff: Pam Madson (786-7166).

Background:

Energy Facility Site Evaluation Council. The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one stop licensing for large energy projects. Council membership includes representatives from nine state agencies. The council's membership may include representatives from the particular cities, counties or port districts where potential projects may be located.

The EFSEC's jurisdiction includes the siting of large natural gas and oil pipelines, electric power plants above 250 megawatts (MW) and their dedicated transmission lines, new oil refineries or large expansions of existing facilities and underground natural gas storage fields.

The EFSEC siting process generally involves six steps: (1) a potential site study followed by an application; (2) State Environmental Policy Act review; (3) review for consistency with applicable local land use laws and plans; (4) a formal adjudication on all issues related to the project; (5) certain air and water pollution discharge permitting reviews as delegated by the U.S. Environmental Protection Agency; and (6) a recommendation to the Governor who then decides whether to accept, reject or remand the application. A certification agreement approved by the Governor preempts any other state or local regulation concerning the location, construction and operational conditions of an energy facility.

Direct Service Industrial Customers. While the vast majority of the electricity that Bonneville Power Administration (BPA) sells is to utilities for resale, BPA does sell electricity for direct consumption to 12 direct-service industrial (DSI) customers in Washington. These companies are large industrial manufacturers, mostly aluminum producers, which consume significant amounts of electricity in their operations. In late 2000, in the wake of spiking wholesale electricity prices, a number of these companies curtailed production.

Low-income home energy assistance program. Assistance to low-income energy customers is provided through a federal block-grant program that allocates funds to the states. The program, known as LIHEAP (Low-Income Home Energy Assistance Program), is administered by the Department of Community, Trade and Economic Development (DCTED).

The LIHEAP grants are distributed to qualifying households through a service network of 24 nonprofit community organizations and three local governments. The grants are used to pay a portion of winter heating costs for low-income customers. Qualifying customers

are those who are at or below 125 percent of the federal poverty level.

Energy efficiency in public buildings. In 1980 the Legislature directed the Department of General Administration (GA) to conduct an energy audit of state-owned buildings and to make modifications and installations to maximize energy efficiency. In 1991 GA was directed to assist state agencies and school districts in identifying and implementing cost effective conservation improvements in public buildings to minimize energy consumption and related environmental impacts and to reduce operating costs.

Municipalities may enter into performance-based energy contracts for equipment and services that are intended to reduce energy use or energy costs of an existing building. A performance-based contract allows for payment to be made under the contract from savings attributable to the use of the equipment and services.

When a public agency determines that a major new facility should be built or renovated, a life-cycle cost analysis must be completed in the design phase of the project. Guidelines for a life-cycle cost analysis are intended to promote selection of low life-cycle cost alternatives. A life-cycle cost is the initial cost and cost of operation of a major facility over its economic life.

Offering a "green" option to utility customers. The Northwest region has seen a growth in demand for electricity while at the same time has not seen much in the way of new generation. The Northwest Power Planning Council's prediction of an increasing possibility of power supply problems during the next few years and the region's recent experience with unprecedented high prices in the western power markets has focused attention again on development of alternative energy sources and on conservation and energy efficiency. The current market prices of electricity are making investments in renewable resources more economically viable than in the past when they have been significantly more expensive than fossil fuels.

Joint Committee on Energy and Utilities. The Joint Committee on Energy and Utilities meets and functions once the Governor declares an energy supply alert or energy emergency. The committee membership includes four Senate members and four House of Representative members from the energy and utilities committees.

Peaking plants. Facilities that are major sources of air pollution are required to obtain an air operating permit. The permit may set limits on emissions, require monitoring, record keeping, reporting, and other compliance measures. Some older electric generation plants are limited in their operations due to air pollution emission limits. Certain industrial, manufacturing, waste disposal, utility and commercial facilities have been granted sales and use tax exemptions for purchases associated with the installation of air and water pollution control equipment.

Taxation. The business and occupation (B&O) tax is Washington's major business tax.

The tax is imposed on the gross receipts of business activities conducted within the state. Natural or manufactured gas that is consumed within the state is subject to the brokered natural gas use tax if the supplier was not subject to the state public utility tax. Public and privately-owned utilities, and certain other businesses, are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. Cities and counties may levy a local tax. The use tax is imposed on items used in the state which were not subject to the retail sales tax, and includes purchases made in other states and purchases from sellers who do not collect Washington sales tax.

Bill history. This bill contains component parts of a number of bills heard during this legislative session. Additional background information can be obtained from the legislative history of other bills dealing with the topics identified in this bill for the 2001 legislative session.

Summary of Bill:

Energy Facility Site Evaluation Council (EFSEC). The departments of Health, Agriculture, and Transportation, and the Military Department are removed from permanent membership on the EFSEC and are allowed to participate as members at each department's discretion. The EFSEC chair becomes a state employee and receives a salary determined by the State Salary Commission.

The threshold for siting new stationary thermal power plants through the EFSEC is raised from 250 megawatts to 350 megawatts, and the threshold for floating thermal power plants is raised from 50 megawatts to 100 megawatts. However, applicants may choose to use the EFSEC process for energy facilities that exclusively use alternative energy resources regardless of generating capacity.

Council staff is given a substantive role by allowing staff to make recommendations to the council on conditions that would allow site approval. The Governor must conduct an evaluation of the council's operations.

Direct service industrial customers (DSI). Tax credits and deferrals are provided to DSI customers who currently purchase electricity from the Bonneville Power Administration. A DSI customer may receive a credit against its business and occupation tax (B&O) for natural gas purchased to generate electricity at a gas turbine electrical generation facility that is owned by the DSI. A deferral of the brokered natural gas use tax is available to a DSI that purchases gas from a company that is not subject to the state PUT. The gas must be used to generate electricity at a gas turbine electrical generation facility owned by the DSI. A credit is available against the PUT paid by an electricity generator that sells electricity to a DSI under a 10 year contract from a new gas turbine

electrical generating facility if certain conditions are met.

The tax credits and deferrals are available beginning July 1, 2001. A DSI must meet certain requirements regarding employment to receive the tax credits and deferrals. The tax credits and deferrals are available for five years. The maximum amount of credits and deferrals available each fiscal year is \$2.5 million and no more than \$1.5 million is available for any one DSI if more than one DSI takes credits or deferrals in a fiscal year.

Low-income home energy assistance program (LIHEAP). A credit is available against the PUT due from gas and electric utilities for qualifying contributions and billing discounts offered to qualifying low-income customers. A utility may begin using the credit in fiscal year 2002 (begins July 1, 2001). To qualify for the credit, the amount of billing discounts or qualifying contributions must be at least 125 percent greater than discounts or contributions given by the utility in 2000. The amount of the credit for each utility is equal to one-half the discount or contribution given in a fiscal year.

The maximum total credit available state-wide each year is \$2.5 million. Each utility is also limited to a maximum credit amount based on its proportional share of energy assistance grants received by its low-income customers. Any credit that is not used in a fiscal year lapses for that utility and may be reapportioned to other qualifying utilities. The total credit available to a utility is its maximum available credit plus any portion of unused credits that are reapportioned to it.

Energy efficiency in public buildings. The concept of energy management systems is introduced into the development of life-cycle cost analysis for the construction or renovation of major public buildings. Municipalities may contract for energy management systems under their existing authority to enter into performance-based contracts for energy equipment and services.

State agencies and school districts must conduct an energy audit of public buildings. An energy audit includes: (1) a survey of energy consumption that identifies the amount, type and rate of consumption; (2) a walk-through survey to determine the need for energy conservation measures and energy management systems; and (3) an investment grade audit if cost-effective measures are identified after a walk-through survey. School district deadlines for the energy consumption survey and the walk-through survey are a few months later than those for state agencies. If an investment grade audit is recommended, it must be completed by December 1, 2002, for state agencies and by June 30, 2003, for school districts. Installation of cost-effective measures must be completed by June 30, 2004, for state agencies and by December 31, 2004, for school districts. School districts that are unable to obtain a contract with an energy service company to conduct an investment grade audit or implement conservation measures is exempt from this requirement. The department must report each biennium, beginning in December 2004, on progress made to date and further changes planned for the next biennium.

For buildings that are leased by the state, energy audits are required only for that portion of the building that is under state lease, and the energy conservation measures that are implemented as a result of the audit must generate sufficient savings to pay for the modifications and installations allowing for repayment during the lease term.

Agencies or school districts that contracted for or completed energy audits and implemented energy saving measures after December 31, 1997, are in compliance with the audit requirement.

Offering a "green" option to utility customers. By January 1, 2002, all electric utilities (other than small electric utilities) must offer their consumers, at least quarterly, a voluntary choice to purchase electricity generated from alternative energy resources.

Joint Committee on Energy and Utilities. The name of the Joint Committee on Energy and Utilities is changed to the Joint Committee on Energy Supply. The procedures for appointing members and selecting leadership of the joint committee are modified. Any member of the Senate or House of Representatives is eligible to be appointed to the committee.

Peaking Plants. A sales and use tax exemption is created for the installation or acquisition of air pollution control equipment for thermal electric peaking plants smaller than 100 MW. The exemption takes effect January 1, 2001, and expires June 30, 2003.

Appropriation: None.

Fiscal Note: Requested.

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

Testimony For: None.

Testimony Against: None.

Testified: None.