

# SENATE BILL REPORT

## HB 1088

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As of March 16, 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:** Passed House: 3/05/09, 61-35.

**Committee Activity:** Ways & Means:

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dean Carlson (786-7305)

**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 provide water or water and wastewater service; and 13 offer wholesale broadband telecommunications service.

The PUDs that generate, transmit, or distribute electricity are subject to the PUD privilege tax. The tax is intended to be in lieu of property tax, since PUDs 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

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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 PUD 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.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The need for this bill came as a result of litigation that came from two PUDs that were separating their base charges from the sale of electricity. This practice had been in place since 1947 so that the total amount billed was subject to the tax. We have been working with the PUDs to draft language that would apply prospectively. This will apply the tax to the total amount billed as it always has.

**Persons Testifying:** PRO: Drew Shirk, Department of Revenue.