

HOUSE BILL REPORT

EHB 2755

As Passed Legislature

Title: An act relating to clarifying the taxation of electrical energy sales.

Brief Description: Clarifying the taxation of electrical energy sales.

Sponsors: Representatives Gombosky, Crouse, Wood, Poulsen, Bush, Reardon, Mielke, Grant, McDonald, Delvin and Mastin.

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 1/26/00, 2/2/00 [DP].

Floor Activity:

Passed House: 2/11/00, 96-0.

Passed Senate: 3/3/00, 40-0.

Passed Legislature.

Brief Summary of Bill

- A public utility tax exemption is granted for resale of electrical energy either within or outside the state, or consumption outside the state.
- Business and Occupation Tax exemptions are granted for revenue from the sale or resale of electrical energy within or outside the state.
- The public utility tax exemptions are to be applied retroactively, while the business and occupation tax exemptions take effect 90 days after passage.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: Do pass. Signed by 14 members: Representatives Crouse, Republican Co-Chair; Poulsen, Democratic Co-Chair; DeBolt, Republican Vice Chair; Ruderman, Democratic Vice Chair; Bush; Cooper; Delvin; Kastama; McDonald; Mielke; Morris; Reardon; Thomas and Wolfe.

Staff: Scott MacColl (786-7106)

Background:

The public utility tax (PUT) is applied to the gross revenues of a light and power business, which includes both public and private electric utilities, for the privilege of operating within this state. Currently 78 businesses fall within the definition of a light and power business, and are thereby subject to the PUT.

There are two exemptions to the PUT in relation to light and power businesses: a) for sales of electricity to another company in the same public service business for resale as such within the state, and b) amounts derived from the production, sale, or transfer of electrical energy for resale or consumption outside the state. Entities that are not subject to the PUT for energy resales are then subject to the Business & Occupation Tax.

The Department of Revenue recently completed a study of electricity taxation in Washington. As a result of the study, the Department of Revenue has interpreted the statute regulating deductions from the PUT for the sales of electricity to another company in the same public service business for resale within the state as not applying to wholesale electricity transactions between a utility and a non-utility. This means the state will apply the PUT to all such transactions.

A light and power business is defined to be the business of operating a plant or system for the generation, production, or distribution of electrical energy for hire or sale.

Summary of Bill:

Public utility tax exemptions are expanded to include revenue earned by any entity involved in the production, sale, or transfer of electrical energy for resale either within or outside the state, or for resale for consumption outside the state.

Business and Occupation Tax exemptions are expanded to include revenues derived from the sale or resale of electrical energy within or outside the state.

The public utility tax exemptions take effect immediately and retroactively.

Appropriation: None.**Fiscal Note:** Available.**Effective Date:** Section 1 of the bill contains an emergency clause and takes effect immediately.

Testimony For: It is the primary business of light and power companies to deliver electricity. The non-governmental entities are regulated by the Utilities and Transportation Commission, and taxed under the public utility tax. Some companies that are light and power companies don't even own generation facilities and need to buy their energy. The Legislature has seen that activity as exempted from the public utility tax.

Prior to 1995, public utility districts were the only entities that were exempted. Now with deregulation, there are marketers and traders that trade wholesale energy. For a wholesale transaction to a non-regulated utility, they had to pay the public utility tax. The intention was never to apply the public utility tax in this manner.

Due to deregulation, there has been an emergence of competition in the wholesale energy markets. Due also to a tight energy market, more buyers and sellers are needed. Seattle City Light sells power on the wholesale market, yet there is a very thin margin of profit. If the PUT was applied, this would force marketers to locate outside the state. Except for an investor owned utility that sells to the direct service industry, this would not affect PUT collections.

Testimony Against: None.

Testified: Collins Sprague, Avista Corporation; Bob Hanson, Avista Corporation; Mike Shay, Snohomish County Public Utilities District; Jim Harding, Seattle City Light; Lew McMurrin, Washington Public Utilities District Association; Kathleen Collins, PacifiCorp; and Mike Tracy, Puget Sound Energy.