

# SENATE BILL REPORT

## SB 5681

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As Reported By Senate Committee On:  
Energy, Technology & Telecommunications, February 25, 1999  
Ways & Means, March 8, 1999

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

**Brief Description:** Levying a use tax for the privilege of consuming electricity in the state of Washington.

**Sponsors:** Senator Brown.

**Brief History:**

**Committee Activity:** Energy, Technology & Telecommunications: 2/11/99, 2/25/99 [DPS-WM].

Ways & Means: 3/3/99, 3/8/99 [DP2S, DNPS].

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### SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5681 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Brown, Chair; Goings, Vice Chair; Fairley, Fraser, Hochstatter and Rossi.

**Staff:** Andrea McNamara (786-7483)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5681 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Fairley, Fraser, Kline, Kohl-Welles, Long, McDonald, Rasmussen, B. Sheldon, Snyder, Spanel, Thibaudeau, West, Winsley and Wojahn.

**Minority Report:** Do not pass substitute.

Signed by Senator Honeyford.

**Staff:** David Schumacher (786-7474)

**Background:** 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 (PUT) 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 also 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.

Under current law, when an in-state power generator exports power out of state, revenue from the export is not subject to the public utility tax. Similarly, when a Washington customer imports electricity into the state from an out-of-state supplier, the import is not subject to the public utility tax.

The amount of electricity being exported and imported by Washington utilities and large industrial customers has increased in recent years as a result of changes in the wholesale electricity markets and competitive pressures within the retail markets.

Under current law, sales and use taxes do not apply to sales for which utilities are taxed under the PUT laws. Sales tax is imposed on most items of tangible personal property. A 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 taxes apply 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.

**Summary of Second Substitute Bill:** The Department of Revenue (DOR) is to undertake a study on the current state and local taxation of the electricity industry in Washington and prepare a report to the Legislature and the Governor by December 1, 1999, with recommendations for revisions to the tax code to avoid revenue loss, promote competitive neutrality, and encourage economic development within the changing electricity industry.

The scope of the study is outlined, including an analysis of the current state and local taxes imposed on wholesale and retail electricity activity; trends in the wholesale and retail electricity markets affecting current and future revenue streams; the extent to which existing tax laws may be insufficient to protect revenue streams; whether the code is adequate to fairly tax new participants in the electricity markets; and options and recommendations to best accomplish the avoidance of revenue loss, promotion of competitive neutrality, and encouragement of economic development.

The Washington Utilities and Transportation Commission, the Energy Division of the Department of Community, Trade, and Economic Development, and the State Auditor are directed to support DOR in the study and preparation of the report, and all entities subject to current electricity taxes are directed to cooperate in providing data for the study.

DOR is directed to consult periodically with the chairs and ranking members of the Senate and House Energy Committees during the course of the study.

**Second Substitute Bill Compared to Substitute Bill:** The second substitute bill removes an appropriation of \$40,000 to DOR; \$30,000 to WUTC; \$20,000 to CTED; and \$10,000 to State Auditor.

**Substitute Bill Compared to Original Bill:** The substitute bill replaces the underlying bill in its entirety; it replaces the creation of an electricity use tax with a study of the current system of state and local taxation of the electricity industry.

**Appropriation:** None.

**Fiscal Note:** Requested on January 25, 1999.

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

**Testimony For (Original Bill):** The potential exists now, and is growing, for the state and local governments to lose revenues because of changes in the electricity industry. Power transactions that were previously subject to taxes can now be done through import or export transactions that are not subject to the taxes. Out-of-state suppliers have a competitive advantage if they can avoid taxes that in-state suppliers have to pay.

**Testimony Against (Original Bill):** The shift from a utility tax to a use tax is more appropriate if the state moves to deregulate the retail electricity industry, but even then it must be a revenue neutral shift. The historical exemption from certain electricity taxes for the direct service industries has created tremendous benefits for the entire state. The aluminum industry offers a great number of excellent family wage jobs that would be seriously jeopardized if a use tax were imposed that did not continue the historical exemption for DSIs.

**Testified:** PRO: Victoria Lincoln, AWC; Mel McDonald, City of Seattle; CON: Gerald Miller, Bill Stevens, Chris Adams, Goldendale Aluminum Company; Dennis Cook; Collins Sprague, AVISTA Corporation.