

# HOUSE BILL REPORT

## E2SHB 2518

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### As Passed Legislature

**Title:** An act relating to exempting from the state public utility tax the sales of electricity to an electrolytic processing business.

**Brief Description:** Exempting from the state public utility tax the sales of electricity to an electrolytic processing business.

**Sponsors:** By House Committee on Finance (originally sponsored by Representatives Kirby, Conway, Morris, Holmquist and Hinkle).

### Brief History:

#### Committee Activity:

Technology, Telecommunications & Energy: 1/23/04, 2/3/04 [DPS];

Finance: 2/9/04, 2/10/04 [DP2S(w/o sub TTE)].

#### Floor Activity:

Passed House: 2/16/04, 88-5.

Senate Amended.

Passed Senate: 3/11/04, 48-1.

House Concurred.

Passed House: 3/11/04, 92-4.

Passed Legislature.

### Brief Summary of Engrossed Second Substitute Bill

- Creates an exemption from the public utility tax (PUT) for income received by a utility from the sale of electricity to a chlor-alkali or a sodium chlorate electrolytic processing business.
- Terminates the exemption by June 30, 2008 and requires evaluations be conducted of the exemption program in 2006 and 2007.

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### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Anderson, Blake, Bush, Delvin, Hudgins, Kirby, McMahan, McMorris, Wallace and Wood.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Nixon, Assistant Ranking Minority Member; Romero and Tom.

**Staff:** Pam Madson (786-7166).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Telecommunications & Energy. Signed by 9 members: Representatives McIntire, Chair; Hunter, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Conway, Morris, Roach and Santos.

**Staff:** Mark Matteson (786-7145).

### **Background:**

Public and privately-owned utilities are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. For electrical utilities, the applicable tax rate is 3.873 percent. Revenues are deposited to the State General Fund.

The PUT does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. However, there are several deductions and credits for specific types of business activities. These activities include wholesale sales and sales of electricity to direct service industrial businesses.

There is a small number of large industrial manufacturers, mostly aluminum smelters, that consume significant amounts of electricity in their processing operations. They purchase their electricity directly from the Bonneville Power Administration and are known as direct service industrial customers or DSIs. The DSIs are not utilities and are not subject to the PUT tax and the income to BPA (a federal agency) from those sales is not subject to the state PUT.

Industrial chemical businesses also use significant amounts of electricity in their chemical processing operations. Some of these businesses purchase their electricity from a local electric utility. The income to the utility from the sale of electricity to the chemical business is subject to the state PUT.

A number of tax incentives include accountability provisions. The principal components of these provisions are disclosure requirements and enforcement mechanisms. Firms that take certain incentives are required to disclose such information as number of jobs created, location of new investments, and other information. For certain incentives, firms must meet certain eligibility requirements, such as the requirement under the rural county and distressed area sales and use tax deferral that for counties with community empowerment zones, a certain number of employees be hired from within the zones, depending on level of investment. Firms in such areas that fail to meet these requirements are required to repay the deferred taxes.

## **Summary of Engrossed Second Substitute Bill:**

Effective July 1, 2004, income from the sales of electricity by a utility to a chlor-alkali or a sodium chlorate chemical business is exempt from the PUT if the sales contract between the utility and the chemical business meets the following conditions:

- (1) The electricity used in the chemical processing is separately metered from the electricity used in the general operation of the business;
- (2) The price of the electricity used in the processing of the chemicals and charged to the chemical business is reduced by the amount of the tax exemption received by the selling utility; and
- (3) If the tax exemption is disallowed, the chemical business must pay the amount of the disallowed exemption to the utility.

If the electricity originally obtained by the utility to meet the contracted amount required by the chemical business for use in the processing of the chemicals is resold by the utility, the income from the resale of that electricity is not exempt from the PUT.

Businesses that claim public utility tax credit must annually report to the Department of Revenue details of employment, wages, and benefits per job (but excluding individual employee identification). The report must also include the quantity of product produced. The first report must include employment, wage and benefit information covering the 12-month period preceding the effective date of the incentives. The report content is not subject to statutory confidentiality requirements. During any year, if a business fails to submit a report, all tax savings attributable to the incentives for the year are due.

The fiscal committees of the House of Representatives and the Senate are required to study the effectiveness of the tax deduction with respect to job creation and other factors deemed necessary. The committees must consult with the Department and address expected trends in electricity prices. Reports must be submitted in December 2007 and December 2010.

The tax deduction expires June 30, 2010.

**Appropriation:** None.

**Fiscal Note:** Available on original bill.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (Technology, Telecommunications & Energy) The purpose of the bill is to save jobs and keep the plants operating. Supplies chemicals to the pulp and paper industry. Process that produces sodium chlorate which is used in bleaching pulp for white paper products. This is a mature commodity in a very competitive global market. Electricity is a prime raw material component in the processing of the product. This exemption may make a small reduction in the price of the electricity but it is significant in this market. Other producers in North America have similar tax exemptions. The Northwest is above the world price of power. In addition to the chemical produced, the process also produces hydrogen that

is used by a food processing plant. The plants are very efficient. Electrolytic process also produces chlorine. Being able to operate means a number of jobs with good wages available in the community. For plants that are currently not operating, it would allow them to again be operational and provide employment and allow those to return to work. This bill is an investment in the state's economy.

**Testimony For:** (Finance) The Pioneer plant in Tacoma was idled in 2002 as a result of the spike in power prices. Electricity is a key raw material in our processes, and accounts for two-thirds of the operating cost. None of our competitors have to pay such a tax. If we can make things pencil out, we would bring back 85 high-paying jobs. We would prefer not to see such stringent accountability requirements.

EKA Chemicals began in 1990 and has invested over \$60 million in the Moses Lake area. We pay out \$2.5 million in wages and benefits annually. For us, electricity represents 57 percent of production costs. Our competitors also receive exemptions on electricity as a raw material. We are just trying to stay competitive. We have state of the art technology. We would like to maintain our payroll and jobs and continue to operate within the community.

**Testimony Against:** (Technology, Telecommunications & Energy) None.

**Testimony Against:** (Finance) None.

**Persons Testifying:** (Technology, Telecommunications & Energy) Representative Holmquist; Calvin Greene, Eka Chemicals Inc.; Jeff Brown, Pioneer Americas; Bill Stauffacher, Pioneer Americas; and Alvin McGee, Pioneer Americas.

**Persons Testifying:** (Finance) (In support) Bill Stauffacher, Jeff Brown, and Alvin Magee, Pioneer Americas; and Calvin Greene, EKA Chemicals Inc.

**Persons Signed In To Testify But Not Testifying:** (Technology, Telecommunications & Energy) None.

**Persons Signed In To Testify But Not Testifying:** (Finance) None.