

---

## Finance Committee

---

### HB 1768

**Brief Description:** Exempting certain sales of electricity to qualifying green businesses from the public utilities tax.

**Sponsors:** Representatives Shavers, Barnard, Chapman and Ramel.

**Brief Summary of Bill**

- Provides a public utilities tax exemption for certain sales of electricity by a light and power business to a qualified business.

**Hearing Date:** 2/22/23

**Staff:** Tracey Taylor (786-7152).

**Background:**

Public Utilities Tax.

The gross income derived from the operation of publicly and privately owned utilities is subject to the public utility tax (PUT), unless otherwise exempt. The tax is imposed in lieu of business and occupation (B&O) tax and is applied only on sales to consumers. Other income of the utility, such as retail sale of tangible personal property, is subject to the B&O tax. There are six different PUT rates, depending on the specific utility activity. The rates are:

- 3.852 percent on telegraph companies, distribution of natural gas, and the collection of sewage;
- 3.8734 percent on the generation or distribution of electrical power;
- 0.642 percent on urban transportation and watercraft vessels under 65 feet in length;
- 1.926 percent on motor transportation, railroads, railroad car companies, and all other public service businesses;
- 5.029 percent on the distribution of water; and

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- 1.3696 percent on log transportation.

A taxpayer who engages in one or more businesses subject to PUT is fully exempt from the tax if their total gross income is \$2,000 or less per month. Any taxpayer that has a total gross income greater than \$2,000 per month does not receive an exemption or deduction under this provision.

A business does not have to file an excise tax return for PUT if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has an annual gross proceed of less than \$24,000.

#### Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

#### **Summary of Bill:**

Beginning October 1, 2023, a PUT exemption for certain sales of electricity is provided. The sale of electricity by a light and power business to qualifying businesses if the commercial operations begin prior to July 1, 2033 and certain terms are included in the contract for the sale of electricity. The contract must require that the electricity to be used in the qualifying activities be separately metered from the electricity used in the business's general operations and the price charged for the electricity used in the qualifying activities be reduced by an amount equal to the PUT exemption granted the light and power business.

The qualifying business must provide the light and power business an exemption certificate prior to claiming the exemption. A qualifying business must use the electricity in qualifying activities for qualifying projects.

The term "qualifying activities" means the green electrolytic hydrogen production process, the renewable hydrogen production process, and the compression, liquification, storage, or dispensing of green electrolytic hydrogen or renewable hydrogen.

The term "qualifying projects" means projects where the use of the hydrogen is included in the state energy strategy, including, but not limited to, high heat industry, fuel for decarbonization of transportation, the storage or generation or electricity.

The exemption does not apply to the remarketing or resale of electricity originally obtained by contract for the qualifying activities.

A taxpayer claiming the PUT exemption must file an annual tax preference performance report with the DOR.

The exemption expires January 1, 2045.

There is a TPPS noting that the tax preference is intended to induce certain designated behavior by taxpayers. It is the Legislature's specific public policy to attract and retain renewable and clean hydrogen production facilities. Metrics for a JLARC review include evaluating the annual volumetric quantity of renewable hydrogen and green electrolytic hydrogen produced in the state as well as the annual percentage of hydrogen produced in the state that is either green electrolytic hydrogen or renewable hydrogen.

**Appropriation:** None.

**Fiscal Note:** Requested on February 7, 2023.

**Effective Date:** The bill takes effect on October 1, 2023.