

SENATE BILL REPORT

EHB 2199

As Reported by Senate Committee On:
Environment, Energy & Technology, February 21, 2024
Ways & Means, February 26, 2024

Title: An act relating to creating business and occupation and public utility tax exemptions for certain amounts received as the result of receipt, generation, purchase, sale, transfer, or retirement of allowances, offset credits, or price ceiling units under the climate commitment act.

Brief Description: Creating business and occupation and public utility tax exemptions for certain amounts received as the result of receipt, generation, purchase, sale, transfer, or retirement of allowances, offset credits, or price ceiling units under the climate commitment act.

Sponsors: Representatives Orcutt, Fitzgibbon, Reed, Doglio and Leavitt.

Brief History: Passed House: 2/9/24, 97-0.

Committee Activity: Environment, Energy & Technology: 2/16/24, 2/21/24 [DP-WM].
Ways & Means: 2/24/24, 2/26/24 [DP, DNP, w/oRec].

Brief Summary of Bill

- Authorizes a business and occupation tax and a public utility tax exemption for covered entities, opt-in entities, and entities that received no cost allowances for amounts received from the receipt, generation, purchase, sales, transfer, or retirement of allowances, offset credits, or price ceiling units under the Climate Commitment Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

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.

Staff: Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Muzzall and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Gildon, Assistant Ranking Member, Operating; Boehnke, Braun and Torres.

Staff: Alia Kennedy (786-7405)

Background: The Climate Commitment Act. In 2021 the Legislature directed the Department of Ecology (Ecology) to implement a cap and invest program, also known as the Climate Commitment Act (CCA), to reduce greenhouse gas (GHG) emissions consistent with the statewide statutory emissions limits, beginning January 1, 2023.

The CCA covers industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual greenhouse gas emissions above 25,000 metric tons of carbon dioxide equivalent. Covered entities must either reduce their emissions, or obtain allowances to cover any remaining emissions. The total number of allowances will decrease over time to meet statutory limits. Some utilities and industries will be issued free allowances; other allowances will be auctioned. An opt-in entity is an entity responsible for GHG emissions not a covered entity but may voluntarily participate and register in the program. An opt-in entity must meet the same requirements for registration and compliance obligations as a covered entity.

A portion of a covered or opt-in entity's compliance obligation may be met through offset credits from projects that result in GHG reductions or removals that are real, permanent, quantifiable, verifiable, and enforceable. Offset projects must be in addition to emissions reductions required by law and a certain percentage must provide direct environmental benefits to Washington State.

Price ceiling units are issued at a fixed price by Ecology for the purpose of limiting price increases and funding further investments in GHG reductions.

Tax Preference Review Requirements. State law provides 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. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use to review the effectiveness of the preference in achieving its stated public policy objectives. Tax preferences must be reviewed by JLARC at least once every ten years, unless state statute requires otherwise. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. There are several rate categories, and a business may be subject to more than one B&O tax rate, depending on the types of activities conducted.

Public Utility Tax. The public utility (PU) tax is imposed on gross income derived from the operation of public and privately owned utilities, including businesses that engage in transportation, communications, and the supply of energy, natural gas, and water. The tax is in lieu of the business and occupation tax. This tax applies only on sales to consumers. There are also varying rates of the PU tax, depending on the specific utility activity.

Summary of Bill: Covered entities, opt-in entities, and entities that received no cost allowances under the CCA are exempt from B&O or PU tax for amounts received from the receipt, generation, purchase, sale, transfer, or retirement of allowances, offset credits, or price ceiling units. The exemptions apply retrospectively and prospectively.

This act is exempt from the requirements of a tax preference performance statement, a JLARC review, and an automatic ten-year expiration.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on April 1, 2024.

Staff Summary of Public Testimony (Environment, Energy & Technology): PRO: When the clean fuels bill was passed, this exemption was in there. So when the CCA was passed, the assumption was this exemption was in there as well. Part of the reason for the purchases and sales of credits is for utilities to offset some of the impacts on lower-income individuals. It is better to use the money to provide lower-income assistance than to put it

into state coffers. The Department of Revenue views these sales as gross receipts that are taxable, but this was an oversight. The utility is required to sell allowances and use the funds for the benefit of ratepayers. The bill will ensure the ratepayers derived the full benefit of these funds. The intent was not to tax these revenues. This is a good little bill.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Ed Orcutt, Prime Sponsor; Jessica Spiegel, WSPA; John Rothlin, Avista; Emily Shay, Association of Washington Business; Charlie Brown, Cascade Natural Gas and NW Natural.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The tax exemption for the sale and transfer of allowances was supposed to be included in the original legislation. The tax exemption is important because allowances were intended to help lower income users offset their costs. Taxing credits will result in unintended cost increases. This tax exemption creates a similar tax treatment as that of the clean fuels program. Allowances for utilities were required so that the companies could sell a certain number and use the proceeds for repairs and mitigating the impact on low-income customers.

Persons Testifying (Ways & Means): PRO: John Rothlin, Avista; Charlie Brown, Cascade Natural Gas and NW Natural.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.