

# HOUSE BILL REPORT

## SHB 1508

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### As Passed House:

March 10, 2007

**Title:** An act relating to an exemption from the business and occupation tax for the resale of natural or manufactured gas by consumers.

**Brief Description:** Providing an exemption from business and occupation tax for the resale of natural or manufactured gas by consumers.

**Sponsors:** By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Orcutt, Hunter, Blake, Takko, Condotta and Dunn; by request of Department of Revenue).

### Brief History:

#### Committee Activity:

Technology, Energy & Communications: 2/6/07, 2/9/07 [DPS];

Finance: 3/2/07 [DPS(TEC)].

#### Floor Activity:

Passed House: 3/10/07, 96-1.

### Brief Summary of Substitute Bill

- Exempts from the business and occupation tax certain revenues from the sale of natural or manufactured gas by consumers.
- Prohibits certain transfers of natural and manufactured gas from being considered a sale.

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## HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hurst, Takko and VanDeWege.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hudgins.

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

**Staff:** Scott Richards (786-7156).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill by Committee on Technology, Energy & Communications be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Conway, Ericks, McIntire, Roach and Santos.

**Staff:** Rick Peterson (786-7150).

### **Background:**

#### **Business and Occupation (B&O) 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. Revenues are deposited in the State General Fund. 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.

The B&O tax does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. However, there are many exemptions for specific types of business activities and certain deductions and credits permitted under the B&O tax statutes.

#### **B&O and Public Utility Tax Exemptions for the Resale of Electrical Energy**

Public utilities are exempt from paying the B&O tax for the sale of electrical energy for resale within or outside the state. State statute provides for public utility tax exemptions applied to 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.

#### **B&O Tax for the Resale of Natural or Manufactured Gas**

Concerns have been raised about the application of the B&O tax to the resale of natural gas by businesses that are primarily consumers of natural gas but occasionally have to resell gas that they had planned to burn. Larger industrial natural gas users cannot predict with certainty how much gas they will need to burn as part of their operations. This creates situations in which the business had bought more gas than they can burn and they must resell the excess amount, incurring a B&O tax liability.

Additionally, sometimes natural gas consumers are required to buy and sell gas to balance pipeline capacity requirements, which may also trigger B&O taxes. In these situations, the consumer is not effectively in the business of selling gas, but incur B&O tax liability for these transactions.

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

The B&O exemption for public utilities and the resale of electric energy is amended to exempt amounts received from the sale of natural or manufactured gas by any person who sells an amount of natural gas that is less than 20 percent of the amount of natural gas that person consumes in the state in the same calendar year.

Two types of transfers of natural and manufactured gas not considered to be a sale: (1) the transfer of any natural or manufactured gas as a result of the acquisition of another business, through merger or otherwise; and (2) transfer of any natural or manufactured gas accomplished solely to comply with federal regulatory requirements imposed on the pipeline transportation of such gas when it is shipped by a third-party manager of a person's pipeline transportation.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:** (Technology, Energy & Communications)

(In support) This is an important bill for many in the paper industry and the communities dependent on this industry. Anything the Legislature can do to help this industry out will keep them viable and maintain jobs that pay well and offer excellent benefits. There are concerns about the future of the industry and associated jobs. This industry uses natural gas and anything we can do to reduce the burden that they face when they have to sell the gas would keep the industry viable.

This bill meets the concerns of gas consumers while establishing appropriate perimeters around the issue of a 20 percent B&O tax exemption on resale of natural and manufactured gas. This bill is the result of extensive meetings with the Department of Revenue (Department) and many natural gas consumers in the state. This bill distinguishes between when a gas transfer is a taxable resale and when a gas transfer is by federal regulation.

This issue of natural and manufactured gas transfers was recently brought to the attention of the Department. The Department was not aware of these transfers and transactions. After consideration the Department came to the determination that these are taxable events. Currently, the Department does not tax these transfers, but intends to start doing so in the near future.

(Opposed) None.

**Staff Summary of Public Testimony:** (Finance)

(In support) Large commercial and industrial natural gas users sometimes need to resell gas to balance their current use with the amount they have purchased for delivery. These users are consumers of gas and are not effectively in the business of selling gas and should not incur B&O tax liability. The Department of Revenue (Department) was not aware of these transfers

and transactions. The Department has not been collecting tax on these sales but intends to start doing so in the near future.

(Opposed) None.

**Persons Testifying:** (Technology, Energy & Communications) Representative Orcutt, prime sponsor; Amber Carter, Association of Washington Business; Paula Pyron, Northwest Industrial Gas Users; and Ben Han, Department of Revenue.

**Persons Testifying:** (Finance) Representative Orcutt, prime sponsor; Gil Brown, Department of Revenue; and Amber Carter, Association of Washington Business.

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

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