

HOUSE BILL REPORT

ESSB 6440

As Passed House - Amended:

March 12, 2014

Title: An act relating to compressed natural gas and liquefied natural gas used for transportation purposes.

Brief Description: Concerning compressed natural gas and liquefied natural gas used for transportation purposes.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King, Eide and Kline).

Brief History:

Committee Activity:

Finance: 3/7/14, 3/10/14 [DPA].

Floor Activity:

Passed House - Amended: 3/12/14, 87-11.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Imposes state and local business and occupation taxes on the sale of natural gas used as a transportation fuel in lieu of state and local utility taxes.
- Allows a natural gas company to claim the machinery and equipment (M&E) sales and use tax exemption for the M&E used in the liquefaction or compression of natural gas used as a transportation fuel from July 1, 2017 through July 1, 2028.
- Exempts consumers from state and local brokered natural gas use taxes for natural gas used as a transportation fuel.
- Provides a detailed performance statement to assess whether the following public policy objectives have been achieved: promoting job creation and positive economic development; lowering carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions; and securing optimal LNG pricing for the Washington ferry system and other public entities.
- Requires that the Washington ferry system and other public entities receive equivalent LNG fuel pricing from a gas distribution business selling LNG for transportation use.

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.

- Narrows the exemption for sales taxes on LNG used outside the state as a marine vessel transportation fuel by 10 percent and completely eliminates the exemption for LNG on July 1, 2028.
- Deposits proceeds from narrowed export exemption to the Motor Vehicle Account.
- Removes natural gas users from persons eligible to apply for an annual fee in lieu of fuel tax, beginning July 1, 2015.
- Establishes a Department of Licensing-led workgroup to evaluate the appropriate level of fuel taxes and fees to apply to the use of natural gas as a transportation fuel.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 7 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Hansen, Lytton, Pollet, Reykdal and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta and Vick.

Staff: Jeffrey Mitchell (786-7139).

Background:

Motor Vehicle Fuel Tax.

Washington imposes a tax on fuel and natural gas when, among other times, the fuel is either removed from a terminal, removed from a refinery, or enters the state for sale, consumption, use, or storage. Currently, Washington imposes a total tax of 37.5 cents on each gallon of fuel and 100 cubic feet of natural gas. Furthermore, a county may impose an additional tax equal to 10 percent of the statewide fuel tax. Alternatively, a county may impose this additional tax for a regional transportation investment district plan, and a regional transportation investment district may levy an additional tax equal to 10 percent of the statewide fuel tax. Finally, cities and towns within 10 miles of an international border, and transportation benefit districts crossing an international border, may impose an additional tax of up to 1 cent per gallon of fuel.

Generally, the terminal operator is liable for paying any such taxes. Taxes are not imposed, however, on the sale of natural gas or propane for use in a motor vehicle. Instead, the vehicle owner must pay an annual license fee in lieu of the fuel tax. A decal or other identifying device must be displayed on a vehicle as authority to purchase the fuel.

State law allows a taxpayer to seek a credit or refund on fuel tax where the fuel is exported from the state.

State and Local Business Taxes: Business and Occupation Taxes and Public Utility Taxes.

The state imposes a tax on public utility businesses for the privilege of operating a public utility business within the state. For gas distribution businesses, the tax is equal to 3.852 percent of the gross income of the business. Furthermore, cities and towns may impose an additional tax on such businesses equal to a maximum of 6 percent. If an entity is taxed as a public utility, it is exempt from Washington's business and occupation (B&O) tax.

Washington imposes a B&O tax on certain business activities, including acting as a manufacturer, retailer, or wholesaler. A manufacturer is one who undertakes activities of a commercial or industrial nature applying labor or skill to materials so that a different or useful substance or article of personal property is produced for sale or use. A B&O tax is imposed on manufacturing businesses equal to 0.484 percent of the gross income of the business. A city may also impose a B&O tax, which is generally capped at 0.2 percent of gross income.

Cities are authorized to impose B&O and utility taxes. These taxes are mutually exclusive in the sense that a particular business activity will not be subject to both taxes. The maximum city B&O rate is 0.2 percent and the maximum city utility tax rate on a gas distribution business is 6 percent.

Machinery and equipment used by a manufacturer as part of a manufacturing activity is exempt from state and local sales and use taxes.

State law provides an exemption for the purchase of fuel that is used in interstate commerce. Therefore, a buyer purchasing fuel that is subject to sales tax pays the tax initially and then seeks a refund or credit for the amount of tax associated with fuel used outside the state.

Brokered Natural Gas Use Tax.

The state imposes a use tax on the privilege of using certain items in the state not otherwise subject to state sales tax. A specific use tax applies to the use of natural gas, and the tax is equal to the public utility tax imposed under RCW 82.16. Local authorities may also impose a use tax on the use of certain items, including natural gas. A use tax imposed by local authorities on natural gas is equal to the local public utility tax imposed within the jurisdiction.

Summary of Amended Bill:

Sales by a gas distribution business of compressed natural gas (CNG) or liquefied natural gas (LNG) used as a transportation fuel are subject to state and local B&O taxes as opposed to state and local utility taxes. "Transportation fuel" is defined as a fuel for the generation of power to propel a motor vehicle, a vessel, or a locomotive.

The compression or liquefaction of natural gas is considered a manufacturing activity thereby allowing a gas distribution business to claim the machinery and equipment sales and use tax exemption; however, the availability of the exemption is delayed until July 1, 2017. A gas distribution business may not claim seek a refund for sales tax paid on machinery and equipment on or after July 1, 2028.

The state and local brokered natural gas use tax does not apply where a consumer uses the gas as a transportation fuel.

It is clarified that foreign vehicles registered pursuant to the international registration plan are subject to the annual fee in lieu of fuel tax, while those registered in a foreign jurisdiction that are not registered under the international registration plan are not.

The exemption for sales taxes on LNG used outside the state as a marine vessel transportation fuel is narrowed by 10 percent and completely eliminated on July 1, 2028.

A detailed performance statement is included to assess whether the following public policy objectives have been achieved: promoting job creation and positive economic development; lowering carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions; and securing optimal LNG pricing for the Washington ferry system and other public entities.

A gas distribution business must provide the Washington state ferry system and other public entities with equivalent LNG fuel pricing for LNG used for transportation purposes.

The Department of Licensing (DOL) is required to convene a work group, together with representatives from the Washington State Department of Transportation, the trucking industry, manufacturers of natural gas, and any other stakeholders. This work group will evaluate the current implementations of the license fee in lieu of fuel tax, requiring a report to the Legislature by December 1, 2014. Finally, this work group will develop a transition plan for taking vehicles from the annual license fee in lieu of fuel tax to payment of the fuel tax, requiring a report to the Legislature by December 1, 2015.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2015.

Staff Summary of Public Testimony:

(In support) Natural gas is the next generation fuel for the trucking industry and anything that makes it easier to put the infrastructure in place is going to help. The Senate bill maintains the current decal program, which is important for propane-powered vehicles. We are working with potential anchor tenants in the Tacoma area, which would result in significant economic development. There is a reduction in greenhouse gas emissions through the use of natural gas. A non-utility business can already take advantage of the M&E sales tax exemption. This bill creates tax parity for any business that wants to produce and sell natural gas used for transportation purposes. Puget Sound Energy is seeking to develop a \$250 million facility in Washington to serve LNG for transportation purposes and to serve regular customers. The bill would help create 500 jobs during construction and with an estimated \$93 million of annual economic benefit. For ongoing operations, it would directly and indirectly create 100 jobs with an estimated \$60 million of annual economic impact. This is an important economic development opportunity that other states and provinces are also looking at. British Columbia is actively expanding LNG facility. Alaska and other states are

also looking to develop these facilities. Ships must convert to LNG by 2016 to comply with emission targets. Liquefied natural gas is the fuel choice of the future with its significant environmental benefits.

(With concerns) We are okay with the idea of taxing natural gas used as a transportation fuel. However, we are concerned that it would immediately exempt businesses from the public utility tax while creating a workgroup that would look at some day, possibly, imposing fuel tax on natural gas.

(Opposed) None.

Persons Testifying: (In support) Larry Pursley, Washington Trucking Association; Mel Sorensen, Pacific Propane Gas Association; Nancy Atwood, Matt Marcellia, and Ben Farrow, Puget Sound Energy; and Al Aldrich, Totem Ocean Trailer Express.

(With concerns) Andy Nicholas, Washington State Budget and Policy Center.

Persons Signed In To Testify But Not Testifying: None.