

# HOUSE BILL REPORT

## HB 1404

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**As Reported by House Committee On:**  
Technology, Telecommunications & Energy  
Finance

**Title:** An act relating to tax credits for new facilities that provide electricity for direct service industrial customers.

**Brief Description:** Establishing tax credits for new facilities that provide electricity for direct service industrial customers.

**Sponsors:** Representatives Casada, Poulsen, Crouse, Ogden, Linville, Kagi, Hatfield, Van Luven, Cooper, Dickerson, O'Brien, Campbell, Conway, Roach, Bush, Lisk, Berkey, Miloscia and Kessler.

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 1/31/01, 2/16/01 [DPS];  
Finance: 2/28/01, 3/8/01 [DP2S(w/o sub TTE)].

**Brief Summary of Second Substitute Bill**

- Establishes tax credits and deferrals available for new gas turbine electrical generating facilities that provide electricity for direct service industrial customers.

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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 18 members: Representatives Crouse, Republican Co-Chair; Poulsen, Democratic Co-Chair; Ruderman, Democratic Vice Chair; Anderson, Berkey, Bush, B. Chandler, DeBolt, Delvin, Esser, Hunt, Linville, Mielke, Morris, Pflug, Reardon, Simpson and Wood.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Cooper.

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

## **Background:**

### ***Direct Service Industries***

While the vast majority of the electricity that Bonneville Power Administration (BPA) sells is to utilities for resale, BPA does sell electricity for direct consumption to 12 direct-service industrial (DSI) customers in Washington. These companies are large industrial manufacturers, mostly aluminum producers, which consume significant amounts of electricity in their operations. The current five-year contract with BPA is set to expire in September 2001. In late 2000, in the wake of spiking wholesale electricity prices, a number of these companies curtailed production.

### ***Business and Occupations Tax (B&O)***

The business and occupation (B&O) tax is Washington's major business tax. The tax is imposed on the gross receipts of business activities conducted within the state. Revenues are deposited to the state general fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. Some key B&O tax rates that may apply to DSIs are manufacturing and wholesaling at 0.484 percent and services at 1.5 percent.

### ***Brokered Natural Gas Use Tax***

Natural or manufactured gas that is consumed within the state is subject to the brokered natural gas use tax if the supplier was not subject to the state public utility tax. The tax is measured by the value of the gas as delivered to the customer. If costs of transportation of the gas were not subject to the public utility tax, then such costs are included in the value of the gas. The rate is the same as the gas distribution rate under the public utility tax. Revenues are deposited to the state general fund.

### ***Public Utility Tax (PUT)***

Public and privately-owned utilities, and certain other businesses, are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. For gas distribution businesses, the applicable tax rate, including permanent surtaxes, is 3.852 percent and for light and power businesses, the rate is 3.873 percent. Revenues are deposited to the state general fund.

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## **Summary of Substitute Bill:**

Tax credits and deferrals are provided to DSI customers who currently purchase electricity from the Bonneville Power Administration.

### ***Business and Occupations (B&O) tax credits***

Beginning July 1, 2004, a DSI customer may receive a credit against its B&O tax for natural gas purchased to generate electricity at a gas turbine electrical generation facility that is owned by the DSI. This credit applies to natural or manufactured gas that is

purchased from a company that pays the PUT.

The amount of the credit is the same as the amount of the PUT paid by the gas company that provides the gas to the DSI. The credit is available for five years.

***Brokered Natural Gas Use Tax***

Beginning July 1, 2004, a deferral of the brokered natural gas use tax is available to a DSI that purchases gas from a company that is not subject to the state PUT. The gas must be used to generate electricity at a gas turbine electrical generation facility owned by the DSI. The deferral is available for gas purchases for the first five years of the facility's operation. If the employment requirement discussed below is met by the DSI, the deferred tax need not be paid.

***Public Utility Tax credit***

Beginning, July 1, 2004, a credit is available against the PUT paid by an electricity generator that sells electricity to a DSI from a new gas turbine electrical generating facility if certain conditions are met: (1) The DSI must contract with the generator for purchase of electricity for a period of at least 10 years; (2) the generator must pass on the amount of the credit to the DSI; and (3) the DSI is responsible for any repayment of the credit if certain additional requirements are not met.

The amount of the credit is the same as the amount of the PUT paid by the electrical generator for the sale of electricity to the DSI. The credit is available for five years.

***Conditions applicable to the tax credits and deferrals***

The tax credits and deferrals are available if requirements regarding employment and diversity of resources are met (if such a requirement is enacted).

The maximum tax credits or deferrals are available if the DSI maintains employment levels equal to or greater than the average of annual employment for the six years prior to the first purchase of gas for use in the generation facility. Reductions in employment during the five years following the first purchase of gas that are below the average of annual employment for the six years prior will result in a reduction in the amount of the credit or deferral available. A repayment schedule is established for this circumstance. In the case of the brokered natural gas use tax, the deferred tax need not be paid if this employment requirement is met.

If a diversification of resources requirement is enacted during the 2001 legislative session, the credit or deferral will only be available to those who meet the requirement.

**Substitute Bill Compared to Original Bill:**

The substitute bill changes the definition of "direct service industrial customer" to include a subsidiary that is more than 50 percent owned by the direct service industrial customer

rather than wholly owned. It also clarifies the calculation of the tax credit and deferral.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 25, 2001.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) More electricity generation is needed in this region. Encouraging DSI customers to self-generate will help produce more generation capacity. There is also a need to diversify the state's energy portfolio. This bill ties tax credits for new generation to jobs. Bonneville Power Administration has changed its historic position of requiring DSI customers to buy all power from BPA, to selling no power to DSIs by 2006. The bill addresses a piece of the strategy to help a major employer stay in the community and continue to operate long term. Some communities are dependent on employment provided by a DSI, and the partnership with the community and support from the community, and other governmental agencies is critical. Aluminum companies require abundant affordable electricity, without it they cannot remain here. Concern was expressed over the requirement that companies sign a 10 year contract to get a five year tax credit. Electricity prices are too volatile for companies to look at 10 year contracts now. Other industries are suffering the same problem as the aluminum smelters and the communities in which they operate. Those other industries are not included in this bill.

**Testimony Against:** This bill doesn't change the basic predicament that communities and companies are in. Smelters can shut down and lay off workers. This bill doesn't address helping communities diversify their economic base. The Legislature would be subsidizing fossil fuel generating resources and that is not good energy policy. Carbon dioxide emissions are the largest single contributor to global warming. The state should adopt a state-wide carbon dioxide emissions standard to mitigate for increased emissions from plants encouraged by this tax credit and deferral. Specific projects are likely to go forward regardless of tax incentives. There is concern about the price and availability of natural gas should several plants go on-line. Where will that leave people who use natural gas for heating their home and other appliances?

**Testified:** (In support) Gerry Miller, Donald Henning and Mark Peterson, Goldendale Aluminum Company; Larry Bellamy and Mark Sigfrinius, city of Goldendale; Dana Peck, Klickitat County Resource Development; Harold Hill, Klickitat County Public Utility District; Carl Conroy, Goldendale School Board; Sandi Swarthout, Alcoa; and Dave Danner, Governor's Office.

(In support with amendments) Tim Boyd, Industrial Customers of Northwest Utilities.

(Information only) Anne Solwick, Department of Revenue.

(Opposed) Eric Espenhorst, Friends of the Earth; Danielle Dixon, Northwest Energy Coalition; and Craig Engelking, Sierra Club.

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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 10 members: Representatives Cairnes, Republican Co-Chair; Morris, Democratic Co-Chair; Berkey, Democratic Vice Chair; Roach, Republican Vice Chair; Carrell, Conway, Pennington, Santos, Van Luven and Veloria.

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

### **Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Technology, Telecommunications & Energy:**

The definition of direct service industrial (DSI) customer is modified in sections 2 and 3 to correspond to a change that had been made in the substitute bill in section 1. The change provides that, for the purposes of the bill, a DSI includes a subsidiary that is more than 50 percent owned by the parent company.

**Appropriation:** None.

**Fiscal Note:** Available for substitute bill.

**Effective Date of Second Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Direct service industrial customers (DSIs) consist mainly of aluminum smelters, which currently buy over 2,000 megawatts (MW) of power directly from the Bonneville Power Association (BPA). The BPA has indicated its intent to reduce the portion of its load going to DSIs. Since DSIs are such big electricity consumers, it is felt that the best solution is to develop self-generation capability. This would ensure a sustainable supply of power.

The potential impact on rural communities is huge, especially if there are shutdowns in places like Goldendale. Four years ago, this crisis was anticipated; however the timing was not. A strategy is in place to deal with a transition by 2006, but events have overtaken things. A loss of the Goldendale facility would devastate the community, which owns the company. It is understood that the benefit of this bill is not a silver bullet, just a piece of the puzzle.

There are other industries like aluminum that pay high wage jobs and suffer from the similar current energy problems. Schedule 48 industrial customers, which are customers that have received a waiver from retail utilities in order to buy power directly on the wholesale market, are similarly exposed. If you are going to have power, self-generation is something that each of our facilities should look at.

**Testimony Against:** There are two good provisions in the bill, but this bill should contain diversification requirements for the incorporation energy efficiency standards and renewable energy resources. The BPA contracted a study that showed that a number of regional and local economies are better off without the aluminum smelters, so the scope of the bill and the tax credits should be focused on communities where there is the greatest need. The credits should also be tied to a reduction in load on BPA. This bill would benefit from provisions added to the Senate companion that put restrictions on any revenues earned from the repurchasing or remarketing of BPA power, and that provide that DSIs may only take advantage of one of the tax credits.

**Testified:** (In support) Dave Danner, Governor's Office; and Gerry Miller, Goldendale Aluminum.

(Opposed, as written) Danielle Dixon, Northwest Energy Coalition; and Tim Boyd, Industrial Customers of Northwest Utilities.