

# SENATE BILL REPORT

## SB 6490

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As Passed Senate, March 10, 2004

**Title:** An act relating to exempting fuel cells from sales and use taxes.

**Brief Description:** Exempting fuel cells from sales and use taxes.

**Sponsors:** Senators Zarelli and Kline; by request of Department of Revenue and Department of General Administration.

**Brief History:**

**Committee Activity:** Ways & Means: 2/23/04 [DP].  
Passed Senate: 3/10/04, 48-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Fairley, Fraser, Hale, Honeyford, Johnson, Pflug, Prentice, Rasmussen, Regala, Roach, Sheahan, B. Sheldon and Winsley.

**Staff:** Catherine Suter (786-7442)

**Background:** Sales tax is imposed on retail sales of most items of tangible personal property and some services. The use tax is imposed on the same privilege of using tangible personal property or services in instances where the sales tax does not apply. Examples of such instances include purchases made in other states and purchases from sellers who do not collect Washington sales tax. Sales and use taxes are levied by the state, counties, and cities. Rates vary between 7 and 8.9 percent, depending on location in the state. Use tax is paid directly to the Department of Revenue.

In 1996, the Legislature provided an exemption from the retail sales and use taxes for machinery and equipment used directly to generate at least 200 watts of electricity using wind or solar energy, and in 1998 expanded the exemption to include landfill gas as a power source. In 2001, the Legislature amended the law to lower the electricity generation threshold to 200 watts and to include fuel cells as a power source. However, the use tax modifications in the 2001 law omitted a reference to fuel cells, and the definition of machinery and equipment for the purposes of both the sales and use tax exemption was not modified to accommodate fuel cells. As a result, although fuel cells are exempt from the retail sales tax for the purposes provided in the exemption, a person that acquires a fuel cell for such purposes owes use tax.

**Summary of Bill:** Machinery and equipment used directly to generate at least 200 watts of electricity using fuel cells are exempt from the use tax.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Last year's HB 2172 directed the Department of General Administration to consider using fuel cells in public works projects. However, in current law, the sales tax exemption for fuel cells is essentially nullified because any sale not subject to the sales tax is subject to the use tax. Therefore, to fulfill the Legislature's previous intent, this bill exempts fuel cells from the use tax.

**Testimony Against:** None.

**Testified:** PRO: Drew Shirk, Department of Revenue; Martin Casey, Department of General Administration.