
HOUSE BILL 1365

State of Washington 58th Legislature 2003 Regular Session

By Representative Morris

Read first time 01/23/2003. Referred to Committee on Finance.

1 AN ACT Relating to excise taxes on generation, distribution, and
2 sale of electric property; amending RCW 54.28.010, 54.28.011,
3 54.28.020, 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055,
4 54.28.060, 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and
5 54.28.120; adding a new chapter to Title 82 RCW; recodifying RCW
6 54.28.010, 54.28.011, 54.28.020, 54.28.025, 54.28.030, 54.28.040,
7 54.28.050, 54.28.055, 54.28.060, 54.28.070, 54.28.080, 54.28.090,
8 54.28.100, 54.28.110, and 54.28.120; providing an effective date; and
9 declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 **Sec. 1.** RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended to
12 read as follows:

13 As used in this chapter:

14 (1) "Operating property" means all of the property utilized by a
15 (~~public utility district~~) publicly owned utility in the operation of
16 a plant or system for the generation, transmission, or distribution of
17 electric energy for sale;

18 (2) "Taxing districts" means counties, cities, towns, school
19 districts, and road districts;

1 (3) "Distributes to consumers" means the sale of electric energy to
2 ultimate consumers thereof, and does not include sales of electric
3 energy for resale by the purchaser;

4 (4) "Wholesale value" means all costs of a (~~public utility~~
5 ~~district~~) publicly owned utility associated with the generation and
6 transmission of energy from its own generation and transmission system
7 to the point or points of inter-connection with a distribution system
8 owned and used by a (~~district~~) publicly owned utility to distribute
9 (~~such~~) energy to consumers, or in the event a distribution system
10 owned by a (~~district~~) publicly owned utility is not used to
11 distribute (~~such~~) energy, then the term means the gross revenues
12 derived by a (~~district~~) publicly owned utility from the sale of
13 (~~such~~) energy to consumers;

14 (5) "Thermal electric generating facility" means a steam-powered
15 electrical energy producing facility utilizing nuclear or fossil fuels;

16 (6) "Placed in operation" means delivery of energy into a
17 transmission or distribution system for use or sale in (~~such~~) a
18 manner as to establish a value accruing to the power plant operator,
19 except operation incidental to testing or startup adjustments;

20 (7) "Impacted area" for a thermal electric generating facility on
21 a federal reservation means that area in the state lying within thirty-
22 five statute miles of the most commonly used entrance of the federal
23 reservation and which is south of the southern boundary of township
24 fifteen north;

25 (8) "Publicly owned utility" means a public utility district, city,
26 or town operating a plant or system for the generation, transmission,
27 or distribution of electric energy for sale;

28 (9) "Telecommunications," "telecommunications facilities," and
29 "wholesale telecommunications services" have the same meaning as under
30 chapter 54.16 RCW.

31 **Sec. 2.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to read
32 as follows:

33 "Gross revenue" (~~shall~~) means the amount received from the sale
34 of electric energy excluding any tax levied by a (~~municipal~~
35 ~~corporation~~) city or town upon the public utility district pursuant to
36 RCW 54.28.070 (as recodified by this act).

1 **Sec. 3.** RCW 54.28.020 and 1983 2nd ex.s. c 3 s 8 are each amended
2 to read as follows:

3 (1) There is (~~hereby~~) levied and there shall be collected from
4 every (~~district~~) publicly owned utility a tax for the act or
5 privilege of engaging within this state in the business of operating
6 works, plants or facilities for the generation, distribution and sale
7 of electric energy. With respect to each (~~such district~~) publicly
8 owned utility, except with respect to thermal electric generating
9 facilities taxed under RCW 54.28.025 (as recodified by this act),
10 (~~such~~) the tax shall be the sum of the following amounts: (a) Two
11 and twenty-eight one-hundredths percent of the gross revenues derived
12 by the (~~district~~) publicly owned utility from the sale of all
13 electric energy which it distributes to consumers who are served by a
14 distribution system owned by the (~~district~~) publicly owned utility;
15 (b) (~~five~~) twenty-one and fifteen one-hundredths percent of the first
16 four mills per kilowatt-hour of wholesale value of self-generated
17 energy distributed to consumers by a (~~district~~) publicly owned
18 utility; (c) (~~five~~) twenty-one and fifteen one-hundredths percent of
19 the first four mills per kilowatt-hour of revenue obtained by the
20 (~~district~~) publicly owned utility from the sale of self-generated
21 energy for resale.

22 (2) An additional tax is imposed equal to the rate specified in RCW
23 82.02.030 multiplied by the tax payable under subsection (1) of this
24 section.

25 NEW SECTION. **Sec. 4.** (1) There is levied and there shall be
26 collected from every publicly owned utility a tax for the act or
27 privilege of engaging within this state in the business of operating
28 works, plants, or facilities for the purposes of selling wholesale
29 telecommunications services. With respect to each such utility, such
30 tax shall be . . . percent of the wholesale value of the services sold.

31 (2) An additional tax is imposed equal to the rate specified in RCW
32 82.02.030 multiplied by the tax payable under subsection (1) of this
33 section.

34 **Sec. 5.** RCW 54.28.025 and 1983 2nd ex.s. c 3 s 9 are each amended
35 to read as follows:

36 (1) There is (~~hereby~~) levied and there shall be collected from

1 every (~~district~~) publicly owned utility operating a thermal electric
2 generating facility, as defined in RCW 54.28.010 (~~as now or hereafter~~
3 ~~amended~~) (as recodified by this act), having a design capacity of two
4 hundred fifty thousand kilowatts or more, located on a federal
5 reservation, which is placed in operation after September 21, 1977, a
6 tax for the act or privilege of engaging within the state in the
7 business of generating electricity for use or sale, equal to one and
8 one-half percent of wholesale value of energy produced for use or sale,
9 except energy used in the operation of component parts of the power
10 plant and associated transmission facilities under control of the
11 person operating the power plant.

12 (2) An additional tax is imposed equal to the rate specified in RCW
13 82.02.030 multiplied by the tax payable under subsection (1) of this
14 section.

15 **Sec. 6.** RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended to
16 read as follows:

17 On or before the fifteenth day of March of each year, each
18 (~~district~~) publicly owned utility subject to this tax shall file with
19 the department of revenue a report verified by the affidavit of its
20 manager or secretary on forms prescribed by the department of revenue.
21 (~~Such~~) The report shall state (1) the gross revenues derived by the
22 (~~district~~) publicly owned utility from the sale of all distributed
23 energy to consumers and the respective amounts derived from (~~such~~)
24 sales within each county; (2) the gross revenues derived by the
25 (~~district~~) publicly owned utility from the sale of self-generated
26 energy for resale; (3) all revenue derived by the publicly owned
27 utility from the sale of wholesale telecommunications services; (4) the
28 amount of all generated energy distributed from each of the facilities
29 subject to taxation by a (~~district~~) publicly owned utility from its
30 own generating facilities, the wholesale value (~~thereof~~), and the
31 basis on which the value is computed; (~~(+4)~~) (5) the total cost of all
32 generating facilities and the cost of acquisition of land and land
33 rights for (~~such~~) facilities or for reservoir purposes in each
34 county; (6) the total cost to build and maintain all wholesale
35 telecommunications facilities; and (~~(+5) such~~) (7) other and further
36 information as the department of revenue reasonably may require in
37 order to administer the provisions of this chapter. In case of failure

1 by a (~~district~~) publicly owned utility to file (~~such~~) a report, the
2 department may proceed to determine the information, which
3 determination shall be contestable by the (~~district~~) publicly owned
4 utility only for actual fraud.

5 **Sec. 7.** RCW 54.28.040 and 1996 c 149 s 16 are each amended to read
6 as follows:

7 (1) Before May 1st, the department of revenue shall compute the tax
8 imposed by this chapter for the last preceding calendar year and notify
9 the (~~district~~) publicly owned utility of the amount (~~thereof~~),
10 which shall be payable on or before the following June 1st.

11 (2) If payment of any tax is not received by the department on or
12 before the due date, there shall be assessed a penalty of five percent
13 of the amount of the tax; if the tax is not received within one month
14 of the due date, there shall be assessed a total penalty of ten percent
15 of the amount of the tax; and if the tax is not received within two
16 months of the due date, there shall be assessed a total penalty of
17 twenty percent of the amount of the tax.

18 (3) Upon receipt of the amount of each tax imposed the department
19 of revenue shall deposit the same with the state treasurer, who shall
20 deposit four percent of the revenues received under RCW 54.28.020(1)
21 (~~and~~), 54.28.025(1) (as recodified by this act), and section 4(1) of
22 this act, and all revenues received under RCW 54.28.020(2) (~~and~~),
23 54.28.025(2) (as recodified by this act), and section 4(2) of this act
24 in the general fund of the state and shall distribute the remainder
25 (~~in the manner hereinafter~~) as set forth in RCW 54.28.050 and
26 54.28.055 (as recodified by this act). The state treasurer shall send
27 a duplicate copy of each transmittal to the department of revenue.

28 **Sec. 8.** RCW 54.28.050 and 1982 1st ex.s. c 35 s 21 are each
29 amended to read as follows:

30 (1) After computing the tax imposed by RCW 54.28.020(1) (as
31 recodified by this act) and section 4(1) of this act and making the
32 distribution under RCW 54.28.040 (as recodified by this act), the
33 department of revenue shall instruct the state treasurer, after placing
34 thirty-seven and six-tenths percent in the state general fund to be
35 dedicated for the benefit of the public schools, to distribute the
36 balance as follows:

1 (a) For amounts collected under RCW 54.28.020(1)(a) (as recodified
2 by this act), the balance shall be distributed to each county in
3 proportion to the gross revenue from sales made within each county;
4 ~~((and to distribute the balance))~~

5 (b) For amounts collected under section 4(1) of this act, if the
6 telecommunications facilities are located in only one county, the
7 balance shall be distributed to the county in which the wholesale
8 telecommunications facilities are located. If the telecommunications
9 facilities are located in more than one county, the balance shall be
10 distributed in a pro rata manner to each applicable county based on the
11 cost of the telecommunications facilities; and

12 (c) For amounts collected under RCW 54.28.020(1) (b) and (c) (as
13 recodified by this act), the balance shall be distributed as follows:
14 If the entire generating facility, including reservoir, if any, is in
15 a single county then all of the balance to the county where ~~((such))~~
16 the generating facility is located. If any reservoir is in more than
17 one county, then to each county in which the reservoir or any portion
18 ~~((thereof))~~ is located, a percentage equal to the percentage determined
19 by dividing the total cost of the generating facilities, including
20 adjacent switching facilities, into twice the cost of land and land
21 rights acquired for any reservoir within each county, land and land
22 rights to be defined the same as used by the federal power commission.
23 If the powerhouse and dam, if any, in connection with ~~((such))~~ the
24 reservoir are in more than one county, the balance shall be divided
25 sixty percent to the county in which the owning ~~((district))~~ publicly
26 owned utility is located and forty percent to the other county or
27 counties or if ~~((said))~~ the powerhouse and dam, if any, are owned by a
28 joint operating agency organized under chapter 43.52 RCW, or by more
29 than one ~~((district))~~ publicly owned utility or are outside the county
30 of the owning ~~((district))~~ publicly owned utility, then to be divided
31 equally between the counties in which ~~((such))~~ the facilities are
32 located. If all of the powerhouse and dam, if any, are in one county,
33 then the balance shall be distributed to the county in which the
34 facilities are located.

35 (2) The provisions of this section shall not apply to the
36 distribution of taxes collected under RCW 54.28.025 (as recodified by
37 this act).

1 **Sec. 9.** RCW 54.28.055 and 1986 c 189 s 1 are each amended to read
2 as follows:

3 (1) After computing the tax imposed by RCW 54.28.025(1) (as
4 recodified by this act) and after making the distribution specified in
5 RCW 54.28.040 (as recodified by this act), the department of revenue
6 shall instruct the state treasurer to distribute the amount collected
7 as follows:

8 (a) Fifty percent to the state general fund for the support of
9 schools; and

10 (b) Twenty-two percent to the counties, twenty-three percent to the
11 cities, three percent to the fire protection districts, and two percent
12 to the library districts.

13 (2) Each county, city, fire protection district and library
14 district shall receive a percentage of the amount for distribution to
15 counties, cities, fire protection districts and library districts,
16 respectively, in the proportion that the population of ~~((such))~~ the
17 ~~((district))~~ publicly owned utility residing within the impacted area
18 bears to the total population of all ~~((such-districts))~~ publicly owned
19 utilities residing within the impacted area. For the purposes of this
20 chapter, the term "library district" includes only regional libraries
21 as defined in RCW 27.12.010(4), rural county library districts as
22 defined in RCW 27.12.010(5), intercounty rural library districts as
23 defined in RCW 27.12.010(6), and island library districts as defined in
24 RCW 27.12.010(7). The population of a library district, for purposes
25 of ~~((such))~~ a distribution, shall not include any population within the
26 library district and the impact area that also is located within a city
27 or town.

28 (3) If any distribution pursuant to subsection (1)(b) of this
29 section cannot be made, then that share shall be prorated among the
30 state and remaining local districts.

31 (4) All distributions directed by this section to be made on the
32 basis of population shall be calculated in accordance with data to be
33 provided by the office of financial management.

34 **Sec. 10.** RCW 54.28.060 and 1996 c 149 s 12 are each amended to
35 read as follows:

36 Interest at the rate as computed under RCW 82.32.050(2) shall be

1 added to the tax (~~hereby~~) imposed from the due date until the date of
2 payment. The tax (~~shall~~) constitutes a debt to the state and may be
3 collected as such.

4 **Sec. 11.** RCW 54.28.070 and 1941 c 245 s 3 are each amended to read
5 as follows:

6 Any city or town in which a public utility district operates works,
7 plants, or facilities for the distribution and sale of electricity, or
8 for the sale of wholesale telecommunications services, shall have the
9 power to levy and collect from (~~such~~) the district a tax under this
10 section. With respect to the distribution and sale of electricity, a
11 tax may be imposed on the gross revenues derived by (~~such~~) the
12 district from the sale of electricity within the city or town,
13 exclusive of the revenues derived from the sale of electricity for
14 purposes of resale. (~~Such~~) With respect to the sale of wholesale
15 telecommunications services, a tax may be imposed under the applicable
16 authority in chapter 35.21 RCW. The tax when levied shall be a debt of
17 the district, and may be collected as such. Any (~~such~~) district
18 shall have the power to add the amount of (~~such~~) tax to the rates or
19 charges it makes for electricity (~~so~~) or wholesale telecommunications
20 services sold within the limits of (~~such~~) the city or town.

21 **Sec. 12.** RCW 54.28.080 and 1957 c 278 s 8 are each amended to read
22 as follows:

23 Whenever any public utility district acquires an operating property
24 from any private person, firm, or corporation and a portion of the
25 operating property is situated within the boundaries of any school
26 district and at the time of (~~such~~) acquisition there is an
27 outstanding bonded indebtedness of the school district, then the public
28 utility district shall, in addition to the tax imposed by this chapter,
29 pay directly to the school district a proportion of all subsequent
30 payments by the school district of principal and interest on (~~said~~)
31 the bonded indebtedness, (~~said~~) the additional payments to be
32 computed and paid as follows: The amount of principal and interest
33 required to be paid (~~by~~) to the school district shall be multiplied
34 by the percentage which the assessed value of the property acquired
35 bore to the assessed value of the total property in the school district
36 at the time of (~~such~~) the acquisition. (~~Such~~) The additional

1 amounts shall be paid by the public utility district to the school
2 district not less than fifteen days prior to the date that ((such)) the
3 principal and interest payments are required to be paid by the school
4 district. In addition, any public utility district which acquires from
5 any private person, firm, or corporation an operating property situated
6 within a school district, is authorized to make voluntary payments to
7 ((such)) the school district for the use and benefit of the school
8 district.

9 **Sec. 13.** RCW 54.28.090 and 1980 c 154 s 9 are each amended to read
10 as follows:

11 The county legislative authority of each county shall direct the
12 county treasurer to deposit funds to the credit of each taxing district
13 in the county, other than school districts, according to the manner
14 they deem most equitable; except not less than an amount equal to
15 three-fourths of one percent of the gross revenues obtained by a
16 district from the sale of electric energy within any incorporated city
17 or town shall be remitted to ((such)) the city or town. Information
18 furnished by the district to the county legislative authority shall be
19 the basis for the determination of the amount to be paid to ((such))
20 cities or towns.

21 The provisions of this section shall not apply to the distribution
22 of taxes collected under RCW 54.28.025 (as recodified by this act).

23 **Sec. 14.** RCW 54.28.100 and 1957 c 278 s 11 are each amended to
24 read as follows:

25 All money((s)) received by any taxing district shall be used for
26 purposes for which state taxes may be used under the provisions of the
27 state Constitution.

28 **Sec. 15.** RCW 54.28.110 and 1957 c 278 s 13 are each amended to
29 read as follows:

30 Whenever(~~(, hereafter,)~~) property is removed from the tax rolls as
31 a result of the acquisition of operating property or the construction
32 of a generating plant by a public utility district, ((such)) the public
33 utility district may make voluntary payments to any municipal
34 corporation or other entity authorized to levy and collect taxes in an
35 amount not to exceed the amount of tax revenues being received by

1 ((such)) the municipal corporation or other entity at the time of
2 ((said)) the acquisition or ((said)) construction and which are lost by
3 ((such)) the municipal corporation or other entity as a result of the
4 acquisition of operating property or the construction of a generating
5 plant by the public utility district(~~(:—PROVIDED, That)~~). However,
6 this section shall not apply to taxing districts as defined in RCW
7 54.28.010(~~(, and:—PROVIDED FURTHER, That)~~) (as recodified by this act)
8 and in the event any operating property ((se)) removed from the tax
9 rolls is dismantled or partially dismantled the payment which may be
10 paid ((hereunder)) shall be correspondingly reduced.

11 **Sec. 16.** RCW 54.28.120 and 1957 c 278 s 14 are each amended to
12 read as follows:

13 In the event any ((~~district hereafter~~)) publicly owned utility
14 purchases or otherwise acquires electric utility properties comprising
15 all or a portion of an electric generation ((~~and/or~~)) or distribution
16 system, or telecommunications properties for the purposes of providing
17 wholesale telecommunications services, from a public service company,
18 as defined in RCW 80.04.010, the total amount of privilege taxes
19 imposed under this chapter ((~~278, Laws of 1957~~)) to be paid by the
20 ((~~district~~)) publicly owned utility annually on the combined operating
21 property within each county where ((such)) the utility property is
22 located, irrespective of any other basis of levy contained in this
23 chapter, will be not less than the combined total of the ad valorem
24 taxes, based on regular levies, last levied against the electric
25 utility property constituting the system so purchased or acquired, or
26 the telecommunications properties purchased or acquired, plus the taxes
27 paid by the ((~~district~~)) publicly owned utility for the same year on
28 the revenues of other operating property in the same county under terms
29 of this chapter. If all or any portion of the property so acquired is
30 subsequently sold, or if rates charged to purchasers of electric energy
31 or wholesale telecommunications services are reduced, the amount of
32 privilege tax required under this section shall be proportionately
33 reduced.

34 NEW SECTION. **Sec. 17.** RCW 54.28.010, 54.28.011, 54.28.020,
35 54.28.025, 54.28.030, 54.28.040, 54.28.050, 54.28.055, 54.28.060,

1 54.28.070, 54.28.080, 54.28.090, 54.28.100, 54.28.110, and 54.28.120
2 are each recodified as a new chapter in Title 82 RCW.

3 NEW SECTION. **Sec. 18.** Section 4 of this act is added to the new
4 chapter created in section 17 of this act.

5 NEW SECTION. **Sec. 19.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 July 1, 2003.

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