Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Technology & Economic Development Committee

2ESSB 5575

Brief Description: Providing sales and use tax exemptions, in the form of a remittance of tax paid, to encourage coal-fired electric generation plants to convert to natural gas-fired plants or biomass energy facilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Braun, Honeyford and Hatfield).

Brief Summary of Second Engrossed Substitute Bill

- Exempts from state and local sales and use taxes all charges for construction related to the conversion of a coal-fired electric generation facility into a natural gas-fired electric generation facility or biomass energy facility.
- Beginning one year after the facility is operationally complete and ending January 1, 2031, requires repayment of sales and use taxes if employment at the facility decreases by 25 percent from the previous year's employment level.

Hearing Date: 2/23/16

Staff: Jasmine Vasavada (786-7301).

Background:

Greenhouse Gas Emissions Performance Standard.
In 2008 the Legislature enacted the Greenhouse Gas Emissions Performance Standard (EPS). Unless an exception applies, electric utilities are prohibited by state law from entering into a long-term financial commitment with a baseload generating facility, such as a coal-fired power plant, if the generating facility's carbon dioxide emissions exceed the EPS.

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.

Coal Transition Power.

In 2011 the Legislature established a schedule for applying the EPS to TransAlta, the only coal-fired power plant in the state. The same legislation provided an exemption from the EPS authorizing electric utilities to enter into a long-term financial commitment for TransAlta's power, called "coal transition power." It also established a process by which an electric utility may petition the Utilities and Transportation Commission for approval of a power purchase agreement for coal transition power. If approved, the utility may treat the purchase as an investment entitled to a portion of the premium it would receive if it constructed a facility with an equivalent generation capacity.

Memorandum of Agreement.

The 2011 legislation required the state to negotiate a binding agreement with TransAlta to achieve emissions reductions at the company's 1,340 megawatt coal-fired Centralia power plant by the end of 2025. At the time, TransAlta had projected that its boilers would reach the end of their expected useful lives in 2035. Terms included a $55 million payout from the company for local economic mitigation, including $30 million for economic development, energy efficiency, and weatherization and $25 million for energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits. In exchange, the company was allowed to sign long-term power sales contracts with in-state utilities under the exemption from the EPS. The memorandum of agreement was required to specify the accounts where the funds are to be deposited, individuals who may approve expenditures from the accounts, and the schedule for disbursing the funds.

Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services (including construction). A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Exemptions from sales and use taxes have been established to create jobs and encourage certain kinds of investments in Washington, including exemptions for purchases of certain machinery and equipment (and the labor and services to install them) by eligible data centers, and exemptions for manufacturers who construct new buildings or parts of buildings that will be used for the manufacture of commercial airplanes.

Taxation of Construction Activities.

Prime contractors must collect retail sales tax from the purchaser of the construction project on the gross contract price (without deduction of costs incurred). Billing invoices must separately state the sales tax. If the contract requires retainage, sales tax must be computed before deducting such amounts. Retail construction services are sourced to the location where the construction takes place. A contractor is considered the consumer of items purchased for use in the construction process and not used as component parts of the finished structure, and therefore, retail sales tax must be paid to the vendors of such items. The purchase of materials by custom contractors that will become part of the completed project are purchases for resale (wholesale). Such purchases are not subject to retail sales tax. Reseller permits allow businesses to purchase items or services for resale without paying retail sales tax. Use tax is due if sales tax has not been paid on items the contractor uses as a consumer. Use tax is generally due (if sales tax has not been paid) on the following: equipment, tools, supplies, and rentals of equipment, even if the cost for these items is passed along to the purchaser of the construction project.

Summary of Bill:

Sales and Use Tax Exemption.
The construction of new structures or renovation of existing structures for the purpose of converting a coal-fired electric generation facility into a natural gas-fired electric generation facility or biomass energy facility is exempt from state and local sales and use tax. The exemption includes the labor and services to construct the facility and the machinery and equipment that is required for the conversion. The tax exemption is in the form of a remittance. A purchaser claiming an exemption must apply to the Department of Revenue (DOR) after the conversion of the facility is operationally complete, but not earlier than April 1, 2020. The DOR must not accept any applications by the later of July 1, 2020, or one year after the conversion of the facility is operationally complete. No remittance may be paid earlier than July 1, 2020. The exemption expires July 1, 2026.

Performance Metrics and Required Repayment.
A tax preference performance statement characterizes the tax preference as one intended to create jobs. Because the tax preference is intended to expire, it is exempt from review by the Joint Legislative Audit and Review Committee. A repayment obligation is created if the number of employment positions at the new facility declines by 25 percent from the previous year's employment level, beginning one year after the facility is operationally complete and ending January 1, 2031. If the repayment obligation is triggered, no additional exemptions may be claimed.

Appropriation: None.

Fiscal Note: Requested on February 22, 2016.

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