

SENATE BILL REPORT

HB 1070

As Reported by Senate Committee On:
Environment, Energy & Technology, March 21, 2019
Ways & Means, April 5, 2019

Title: An act relating to the tax treatment of renewable natural gas.

Brief Description: Concerning the tax treatment of renewable natural gas.

Sponsors: Representatives Mosbrucker, Fitzgibbon, Tharinger and Doglio.

Brief History: Passed House: 3/08/19, 95-0.

Committee Activity: Environment, Energy & Technology: 3/20/19, 3/21/19 [DP-WM].
Ways & Means: 4/03/19, 4/05/19 [DP, DNP].

Brief Summary of Bill

- Imposes business and occupation taxes on the sale of renewable natural gas by a public utility in lieu of public utility tax.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Billig, Brown, Das, Hobbs, Liias, McCoy, Nguyen, Short and Wellman.

Staff: Greg Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hunt, Keiser, Liias, Palumbo, Pedersen, Schoesler, Van De Wege, Wagoner and Warnick.

Minority Report: Do not pass.

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.

Signed by Senator Hasegawa.

Staff: Jeffrey Mitchell (786-7438)

Background: Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Revenues are deposited in the state general fund. There are several rate categories, and a business may be subject to more than one B&O tax rate, depending on the types of activities conducted. Current law authorizes multiple exemptions, deductions and credits to reduce the B&O tax liability for specific taxpayers and business industries.

Public Utility Tax. Income from utility operations is taxed under the public utility tax (PUT), in lieu of the B&O tax; other income of the utility firm, for example, retail sales of tangible personal property, is subject to the B&O tax.

PUT does not apply to sales by a gas distribution business of:

- compressed natural gas (CNG) or liquefied natural gas (LNG), where the CNG or LNG is to be sold or used as transportation fuel; or
- natural gas from which the buyer manufactures CNG or LNG, where the CNG or LNG is to be sold or used as transportation fuel.

Instead, these sales are subject to the B&O tax.

Brokered Natural Gas. A use tax is levied on businesses that use natural or manufactured gas within the state if the gas is shipped directly to the business through a pipeline. The use tax rate for brokered natural gas is equal to the PUT rate for gas distribution businesses. The use tax is not levied on gas that was delivered by some other means for which the PUT tax has already been paid and does not apply to the use of natural gas, CNG, or LNG if the consumer uses the gas for transportation fuel.

Renewable Natural Gas. Renewable natural gas (RNG), also called biomethane, is produced by removing carbon dioxide, trace gases, and contaminants from biogas. Biogas is produced naturally through anaerobic decomposition of organic materials in landfills and in anaerobic digesters located at wastewater treatment plants, food processing facilities, and farms.

A sales and use tax exemption is available for purchases of equipment necessary to process biogas from a landfill into marketable coproducts such as RNG and for purchases related to establishing or operating an anaerobic digester. For the purpose of this exemption, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container, as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts.

Tax Preferences. All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference.

In addition, an automatic ten-year expiration date is applied to new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Bill: The PUT exemption for certain sales by a gas distribution business is extended to include sales of RNG. For the purpose of the PUT exemption, "renewable natural gas" means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

In lieu of the PUT, sales of RNG by a gas distribution business are subject to the B&O tax.

The definition of to manufacture, as it pertains to the B&O tax, is expanded to include the production or processing of RNG.

The tax preference does not include a tax preference performance statement and does not expire.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Environment, Energy & Technology): PRO: The bill would sync the tax rates, make the PUD more competitive throughout the market, and increase PUD involvement in the green energy movement. As a fuel, RNG is used as a renewable energy replacement for fossil fuels. Klickitat PUD has been in the renewable energy business for 20 years, with over \$100 million invested. A renewable gas plant was commissioned last year, and the PUD is looking for certainty in the future that this fuel will receive the same tax treatment, regardless of end use.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Gina Mosbrucker, Prime Sponsor; Dave Warren, Klickitat PUD; Kevin Ricks, Klickitat PUD.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): Renewable natural gas is taxed differently depending on the end use. One end use is taxed at the B&O rate and the other is at the PUT rate, which is about 3 percent higher. Because the cleaning and conditioning required to make landfill gas suitable for end use is already at the cost premium in the market against conventional natural gas, this bill would knock 3 percent off those higher cost end uses. This bill is about tax parity. It will also save the manufacturers and producers a lot of paperwork because they have to track the gas to the end use and then file paperwork to certify that it was used either as a transportation fuel or for some other purpose. There is no revenue impact from the bill. This bill will make it a little more attractive for dairies,

wastewater treatment plants, and landfill operators to invest in the equipment to clean and produce this gas and send it to market.

Persons Testifying (Ways & Means): PRO: Dave Warren, Klickitat PUD.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.