HOUSE BILL REPORT
HB 1768

As Reported by House Committee On:
Finance

Title: An act relating to exempting certain sales of electricity to qualifying green businesses from the public utilities tax.

Brief Description: Exempting certain sales of electricity to qualifying green businesses from the public utilities tax.

Sponsors: Representatives Shavers, Barnard, Chapman and Ramel.

Brief History:

Committee Activity:

Finance: 2/22/23, 3/9/23 [DPS].

Brief Summary of Substitute Bill

- Provides a public utilities tax exemption for certain sales of electricity by a light and power business to a qualified business.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Ramel, Santos, Springer, Stokesbary, Thai, Walen and Wylie.

Minority Report: Without recommendation. Signed by 1 member: Representative Chopp.

Staff: Tracey Taylor (786-7152).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Public Utilities Tax.

The gross income derived from the operation of publicly and privately owned utilities is subject to the public utility tax (PUT), unless otherwise exempt. The tax is imposed in lieu of business and occupation (B&O) tax and is applied only on sales to consumers. Other income of the utility, such as retail sale of tangible personal property, is subject to the B&O tax. There are six different PUT rates, depending on the specific utility activity. The rates are:

- 3.852 percent on telegraph companies, distribution of natural gas, and the collection of sewage;
- 3.8734 percent on the generation or distribution of electrical power;
- 0.642 percent on urban transportation and watercraft vessels under 65 feet in length;
- 1.926 percent on motor transportation, railroads, railroad car companies, and all other public service businesses;
- 5.029 percent on the distribution of water; and
- 1.3696 percent on log transportation.

A taxpayer who engages in one or more businesses subject to the PUT is fully exempt from the tax if their total gross income is $2,000 or less per month. Any taxpayer that has a total gross income greater than $2,000 per month does not receive an exemption or deduction under this provision.

A business does not have to file an excise tax return for the PUT if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has an annual gross proceed of less than $24,000.

Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Substitute Bill:

Beginning October 1, 2023, a PUT exemption for certain sales of electricity is provided. The sale of electricity by a light and power business to qualifying businesses if the commercial operations begin prior to July 1, 2033, and certain terms are included in the contract for the sale of electricity. The contract must require that the electricity to be used in the qualifying activities be separately metered from the electricity used in the business's general operations and the price charged for the electricity used in the qualifying activities be reduced by an amount equal to the PUT exemption granted the light and power business. The electricity sold must be from a renewable resource or nonemitting electric generation. The maximum annual credit amount per qualifying business is $100,000.

The qualifying business must provide the light and power business an exemption certificate prior to claiming the exemption. A qualifying business must use the electricity in qualifying activities for qualifying projects and provide annual certification that the qualifying project meets the exemption requirements. Any relevant records related to the exemption claimed pursuant to this act must be retained by the qualifying business for five years.

The term "qualifying activities" means the green electrolytic hydrogen production process, the renewable hydrogen production process, and the compression, liquification, storage, or dispensing of green electrolytic hydrogen or renewable hydrogen.

The term "qualifying projects" means one or more of the prioritized uses:
- high heat industrial processes using hydrogen as a fuel and industrial process using hydrogen as feedstock;
- fuel for commercial motor vehicles, aviation, maritime transportation, drayage, or mass transit;
- generation of electricity using a hydrogen fuel cell or using a combustion turbine operation no more than 500 hours per year; or
- production of a green hydrogen carrier is used in one of the other prioritized uses.

A qualifying business must use electricity in qualifying activities where at least 60 percent of the hydrogen is used in one or more qualifying projects. The exemption does not apply to the remarketing or resale of electricity originally obtained by contract for the qualifying activities. A taxpayer claiming the PUT exemption must file an annual tax preference performance report with the DOR.

The exemption expires January 1, 2035.

Substitute Bill Compared to Original Bill:

The substitute bill:
- clarifies that the electricity sale must be from a renewable resource or nonemitting electric generation;
- provides a maximum annual credit amount per qualifying business is $100,000;
- clarifies that the end use of hydrogen does not need to be at the facility owned by the qualifying business;
- requires annual certification that the qualifying project meets the requirements of the exemption;
- requires a qualifying business to retain relevant records for five years;

- provides a definition of "commercial motor vehicle";
- expands prioritized uses for qualifying projects;
- updates definition of "qualifying business" to include a requirement that at least 60 percent of the hydrogen is being used for a qualifying project;
- changes the definition of a "qualifying project";
- removes the TPPS;
- changes the expiration date from January 1, 2045, to January 1, 2035; and
- updates definitions to reference those already in statute.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2023.

Staff Summary of Public Testimony:

(In support) This bill is a critical step in the deployment of green hydrogen by fostering a public-private partnership to sell clean electricity. It provides an incentive for ongoing operations. The incentives in this bill will provide a meaningful benefit for those with the light and power business's service area, especially in those hard to decarbonize areas. For many of these operations, the cost of electricity is 75 percent of the operational costs. This would provide meaningful savings for those investing in long-term energy alternatives.

(Opposed) None.

Persons Testifying: Representative Clyde Shavers, prime sponsor; Joe Clark, Twin Transit; Dave Warren, Washington Green Hydrogen Alliance; and Logan Bahr, Tacoma Public Utilities and Tacoma Power.

Persons Signed In To Testify But Not Testifying: None.