

# HOUSE BILL REPORT

## E2SHB 1009

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### As Passed House:

March 10, 2009

**Title:** An act relating to extending the expiration dates for existing sales and use tax exemptions related to certain electricity generation.

**Brief Description:** Modifying existing sales and use tax exemptions related to certain electricity generation.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Morris, Chase, Lias, Anderson, Orcutt, Seaquist, Hudgins and Moeller).

### Brief History:

#### Committee Activity:

Technology, Energy & Communications: 2/9/09, 2/18/09 [DPS];

Finance: 2/27/09, 3/2/09 [DP2S(w/o sub TEC)].

#### Floor Activity

Passed House: 3/10/09, 93-3.

### Brief Summary of Engrossed Second Substitute Bill

- Extends the expiration date for the sales and use tax exemption for eligible renewable energy and fuel cell machinery and equipment.
- Provides that the sales and use tax exemption is a refund for the state portion of the sales and use tax.
- Caps the total amount of the refunds provided to eligible recipients during the fiscal biennium at \$20 million.
- Specifies that the sales and use tax exemption is available to a qualifying utility under the Energy Independence Act, or to a person contracting with a qualifying utility for the sale of electric power generated by eligible renewable energy and fuel cell machinery and equipment.

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## HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 15 members: Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking

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*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.*

Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Finn, Hasegawa, Herrera, Hudgins, Jacks, McCune, Morris, Takko and Van De Wege.

**Staff:** Scott Richards (786-7156)

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 9 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta, Conway, Ericks, Santos and Springer.

**Staff:** Jeffrey Mitchell (786-7139)

### **Background:**

#### Sales and Use Tax.

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. Sales taxes are levied by the state, counties, and cities, and total rates vary from 7 to 8.9 percent. The use tax is paid directly to the Department of Revenue.

#### Sales and Use Tax Exemption for Renewable Energy Machinery and Equipment.

A retail sales and use tax exemption applies to the sale or use of machinery and equipment used directly in generating electricity from renewable sources. The qualifying sources are fuel cells, wind, sun, and landfill gas. The exemption also applies to labor and services rendered in respect to the installation of eligible machinery and equipment. The generating facility must be capable of generating at least 200 watts of electricity.

The exemption expires June 30, 2009.

#### Legislative Tax Preference Performance Reviews.

In 2008 the Joint Legislative Audit and Review Committee, as part of its tax preference performance review process, estimated the total state and local taxpayer savings related to this tax incentive to be \$26.7 million in the 2008 fiscal year, growing to \$36.4 million by the 2011 fiscal year.

#### Energy Independence Act.

Approved by voters in 2006, the Energy Independence Act (Initiative 937) requires electric utilities with 25,000 or more customers to meet targets for energy conservation and for use of eligible renewable resources.

#### Eligible Renewable Resource Targets.

Each qualifying utility must use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

- at least 3 percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
- at least 9 percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
- at least 15 percent of its load by January 1, 2020, and each year thereafter.

Eligible Renewable Resource.

"Eligible renewable resource" includes wind, solar, geothermal energy, landfill and sewage gas, wave and tidal power, and certain biomass and biodiesel fuels. Electricity produced from an eligible renewable resource must be generated in a facility that started operating after March 31, 1999. The facility must either be located in the Pacific Northwest or the electricity from the facility must be delivered into the state on a real-time basis. Incremental electricity produced from efficiency improvements at hydropower facilities owned by qualifying utilities is also an eligible renewable resource, if the improvements were completed after March 31, 1999.

**Summary of Engrossed Second Substitute Bill:**

A sales and use tax exemption is provided in the form of a refund for sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment. The sales and use tax refund is available to a qualifying utility or to a person contracting with a qualifying utility for the sale of electric power generated by a facility containing such machinery and equipment. A qualifying utility is defined as an electric utility that is required under the Energy independence Act (Initiative 937) to use certain amounts of eligible renewable resources.

Sellers of eligible machinery and equipment must collect the tax on sales subject to this exemption. The buyer must apply for a refund directly from the Department of Revenue (Department) in a form and manner required by the Department. The refund is only for the state portion of the sales tax. The Department may not provide refunds for the remainder of a fiscal biennium once the total amount of refunds provided during the fiscal biennium equals \$20 million.

The expiration date for the tax incentive is June 30, 2020.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on June 30, 2009.

**Staff Summary of Public Testimony (Technology, Energy & Communications):**

(In support) The incentive is working. This bill is trying to link the sales and use tax incentive to support the goals of the Energy Independence Act. The way this incentive is structured in the bill will encourage the development of wind power in Washington. This tax

incentive creates significant jobs and capital investment in rural areas of the state where the state's best wind resources are located. The tax incentive helps to create family wage jobs. It is a very competitive environment for renewable energy development. Incentives such as this one play an important role in developing renewable energy projects. Washington has tax preferences for coal and oil without an expiration date. The state needs to maintain a tax incentive to encourage renewable energy in the state.

(In support with concerns) The bill is too limiting for engine based co-generation of power. Language needs to be provided in the bill to include these technologies. The bill may be too narrow to account for the many ways renewable energy projects are developed and financed. The bill needs to be amended to account for these situations.

(Opposed) None.

**Staff Summary of Public Testimony (Finance):**

(In support) This tax incentive will not only help us and our customers, but also bring more of these developers to our state. This bill will benefit rural communities. There is a problem with the definition of qualifying utility because some utilities might not be able to meet the 25,000 customer requirement. Wind generation is approximately 10-15 percent more expensive than natural gas. Without this tax break, our customers will have to pay more than customers deriving energy from natural gas power plants. This is not the time to discourage renewable energy development. A main competitor with Washington state for these projects is Oregon, which has no sales tax and a strategic investment program. The state of Idaho also provides a sales and use tax exemption for these renewable projects. These projects that come to our state pay property taxes and support local communities.

(Opposed) None.

**Persons Testifying (Technology, Energy & Communications):** (In support) Representative Morris, prime sponsor; Debbie Strand, Stand Consulting; Tyson Utt, Horizon Wind Energy; Robert Kahn, Northwest and Intermountain Power Producers Association; Craig Engelking, Sierra Club; and Naomi Meyer and Zoe Hamilton, Washington State Legislative Youth Advisory Council.

(In support with concerns) Chuck Collins, Cascade Power; Collins Sprague, Avista Corporation; and Carrie Dolwick, Northwest Energy Coalition.

(Opposed) None.

**Persons Testifying (Finance):** Dave Andrew, Cowlitz County PUD; Ken Johnson, Puget Sound Energy; Dave Arbaugh, Northwest and Inter-Mountain Power Producers; and Collins Sprague, Avista Corp.

**Persons Signed In To Testify But Not Testifying (Technology, Energy & Communications):** None.

**Persons Signed In To Testify But Not Testifying (Finance):** None.