

HOUSE BILL REPORT

SHB 1321

As Passed House:

March 9, 2009

Title: An act relating to the tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.

Brief Description: Concerning the tax on cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development.

Sponsors: House Committee on Finance (originally sponsored by Representatives Kenney, McCoy, Haler, Chandler, Ericks, Ormsby, Hasegawa, Pettigrew, Walsh, Klippert and Armstrong).

Brief History:

Committee Activity:

Finance: 2/3/09, 3/2/09 [DPS].

Floor Activity

Passed House: 3/9/09, 95-1.

Brief Summary of Substitute Bill

- Reduces the business and occupation tax rate from 1.5 percent to 0.471 percent for identified activities such as information technology and security that support the performance of cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development for the United States.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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: Joseph Archuleta (786-7192)

Background:

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.

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.

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. The use tax applies if retail sales tax has not been collected. Both the state and local governments impose sales and use taxes; the state rate is 6.5 percent and the average local rate is about 2 percent statewide. Sales taxes are collected by the seller from the buyer at the time of sale.

In 1996 the Legislature enacted provisions providing a preferential excise tax (B&O tax rate of 0.471 percent) to persons providing services of cleaning up radioactive waste and other byproducts of weapons production at the Hanford Nuclear Reservation. Persons providing such services are deemed consumers and must pay sales and use tax on materials acquired during the construction contract.

The specific services that are affected by the 1996 legislation include:

- handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, non-radioactive hazardous solid and liquid wastes, or spent nuclear fuel;
- spent nuclear fuel conditioning;
- removal of contamination in soils and ground water;
- decontamination and decommissioning of facilities; and
- activities integral and necessary to the direct performance of cleanup.

In January 2005 the Department of Revenue revised its rule concerning the tax treatment of sales made to the federal government or from the federal government. The revised rule provided for the first time an interpretation of qualifications necessary for the preferential nuclear cleanup classification. To be "integral and necessary" to the direct performance of cleanup, an activity must: (1) directly precede, be concurrent with, or directly follow one of the enumerated activities; and (2) be indispensable to one of the enumerated activities.

Summary of Substitute Bill:

The substitute bill reduces the B&O tax rate from 1.5 percent to .471 percent for information technology, computer support, services rendered in respect to infrastructure, as well as security, safety, and health service activities supporting the performance of cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development for the United States.

The act takes effect October 1, 2009 and applies prospectively.

The preferential B&O tax rate expires on July 1, 2015.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect October 1, 2009.

Staff Summary of Public Testimony:

(In support) This bill clarifies existing legislation and ensures that money appropriated for clean up is used for clean up activities. It makes sure that all Hanford contractors are treated consistently in their B&O tax exemption. Information technology is critical for employees to do their jobs, and to keep them safe and secure is necessary for transporting plutonium outside of the state. Right now it is difficult to get any additional funding from Congress for Hanford clean up, and activities at Hanford already pay substantial local and state taxes. Without this tax exemption people could potentially lose jobs. Each job at Hanford supports two additional jobs in the community, and if there is job loss, it will only hurt the community and take longer to clean up Hanford.

(Opposed) Under this bill, the employees of companies affected by this exemption could be considered as part of the Hanford workforce and therefore should be eligible for on-site Hanford retirement benefits; however, the United State Department of Energy (USDOE) has already determined this is not so. Right now the USDOE is required under the Hanford Clean-Up Agreement to request from Congress all the funds necessary to perform all the clean up, which includes state taxes, so reducing the tax only reduces the amount of money they are required to request. The state is currently in court over the issue of the federal government requesting money for all the work, including state taxes, and this bill undermines that argument. This bill does nothing to actually spur clean-up, it only reduces much needed state revenue for education and social services.

(Information only) Under the gift of public funds in the Constitution, if someone has paid taxes, then they cannot be refunded and a substitute for this bill has been done that eliminates the retroactivity of the bill. This bill is not due to a change in interpretation by the Department of Revenue. It changes the definition in the statute from "integral and necessary" to "supporting the performance" of clean up activities. It has been unclear what constitutes "integral and necessary" for the direct performance of clean up and this bill clarifies that. There are four areas related to clean up: information technology, infrastructure, safeguard and security, and health services. This bill applies to contractors and subcontractors hired by the USDOE for clean up at the Hanford site.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Representative Haler; Representative Klippert; Mark Reavis, Laborers Local 348; Carol Moser, Citizen Activist from Richland, Washington; Carl Adrian, Tri-City Development Council; and Frank Armijo, Lockheed Martin.

(Opposed) Glynn Stevens, Hanford Retirement Benefits Action Committee; and Gerry Pollet, Heart of America Northwest.

(Information only) Drew Shirk, Department of Revenue; and Gregory Jones, United States Department of Energy.

Persons Signed In To Testify But Not Testifying: None.