

Multiple Agency Fiscal Note Summary

Bill Number: 1088 HB	Title: PUD taxes clarification
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Estimated Cash Receipts

Agency Name	2009-11		2011-13		2013-15	
	GF- State	Total	GF- State	Total	GF- State	Total
Total \$						

Local Gov. Courts *						
Local Gov. Other **	Non-zero but indeterminate cost. Please see discussion.					
Local Gov. Total						

Estimated Expenditures

Agency Name	2009-11			2011-13			2013-15		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total	0.0	\$0	\$0	0.0	\$0	\$0	0.0	\$0	\$0

Local Gov. Courts *									
Local Gov. Other **	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Total									

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Prepared by: Ryan Black, OFM	Phone: 360-902-0417	Date Published: Final
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Department of Revenue Fiscal Note

Bill Number: 1088 HB	Title: PUD taxes clarification	Agency: 140-Department of Revenue
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Part I: Estimates

☒ No Fiscal Impact

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Rick Peterson	Phone: 360-786-7150	Date: 01/11/2009
Agency Preparation: Ray Philen	Phone: 360-570-6078	Date: 01/14/2009
Agency Approval: Don Gutmann	Phone: 360-570-6073	Date: 01/14/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 01/14/2009

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

The Public Utility District (PUD) privilege tax, imposed in chapter 54.28 RCW, compensates for PUDs' exemption from property tax as public entities. The measure of the tax is "gross revenue," which is defined as "the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070."

This proposal amends the definition of gross revenue to include all amounts received from the sale of electric energy, including any regularly recurring charge to customers and excluding any tax levied by cities under the authority of RCW 54.28.070.

This proposal applies prospectively only.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

REVENUE ESTIMATES

A superior court has recently invalidated the Department of Revenue's (Department) interpretation of "gross revenue" for PUD privilege tax purposes. According to the superior court decision, the correct measure of the PUD privilege tax is the revenue from charges for kilowatt-hours used (i.e., revenues from the sale of electricity) and does not include revenue from other separately-stated charges or fees. The two PUDs that filed the suit separate their kilowatt-hour charges from other charges (e.g., charges to recoup operating costs).

The decision is being appealed. If the decision stands, this fiscal note assumes that all PUDs will likely separate their kilowatt-hour charges from other charges and pay the privilege tax on only the kilowatt-hour charges. As a result, PUD privilege tax receipts will decrease by \$2.2 million, a reduction of approximately 5.5 percent.

However, since this proposal would have the effect of codifying the Department's interpretation of the existing definition of "gross revenue," the revenue impact of this proposed legislation is zero.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000): None.

Local Government, if applicable (cash basis, \$000): None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing

The Department does not anticipate incurring any costs associated with the implementation of this legislation.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

No rule-making required.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 1088 HB	Title: PUD taxes clarification
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- ☐ Cities:
- ☒ Counties: Potential revenue impact to counties
- ☒ Special Districts: Potential expenditure impact to public utility districts
- ☒ Specific jurisdictions only: Potential expenditure impact to public utility districts
- ☐ Variance occurs due to:

Part II: Estimates

- ☐ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☐ Legislation provides local option:
- ☒ Key variables cannot be estimated with certainty at this time: The current definition of gross revenue based on the superior court's ruling is under appeal. The court of appeals' ruling will determine to what extent this bill would impact PUDs.

Estimated revenue impacts to:

Indeterminate Impact

Estimated expenditure impacts to:

Indeterminate Impact

Part III: Preparation and Approval

Fiscal Note Analyst: Darleen Muhly	Phone: (360) 725 5030	Date: 01/13/2009
Leg. Committee Contact: Rick Peterson	Phone: 360-786-7150	Date: 01/11/2009
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 01/13/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 01/13/2009

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This bill is in response to the recent ruling by the Thurston County Superior Court in Case No. 05-2-02525-2. The bill would change the definition of gross revenue, as it relates to the privilege tax for public utilities, to include any regularly recurring charge billed to customers as a condition of receiving electric energy.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

The bill would have indeterminate expenditure impacts to public utility districts that provide electricity because the court's decision regarding the interpretation of existing statute is being appealed. If the court decision stands, Department of Revenue (DOR) assumes that all PUDs will likely separate their kilowatt-hour charges from other charges and pay the privilege tax on only the kilowatt-hour charges. DOR estimates in their fiscal note that PUD privilege tax receipts will decrease by \$2.2 million, a reduction of approximately 5.5 percent.

Currently not all public utilities have separately stated charges. For the two PUDs in the suit who do have separately stated charges, Clark County Public Utilities estimates an annual cost of at least \$540,000 annually, and Grays Harbor PUD estimates an annual cost of \$115,000 as a result of this proposed legislation.

BACKGROUND

The superior court's decision invalidated DOR's interpretation of "gross revenue" for PUD privilege tax purposes. According to that decision, the correct measure of the PUD privilege tax is the revenue from charges for kilowatt-hours used (i.e., revenues from the sale of electricity) and does not include revenue from other separately-stated charges or fees. The two PUDs that filed the suit separate their kilowatt-hour charges from other charges (e.g., charges to recoup operating costs).

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This statute impacts the PUD privilege tax. This tax compensates for the PUDs' exemption from property tax as public entities; 37.6 percent of this tax is dedicated to public schools. The remainder is distributed to counties.

It is not possible to determine how much tax would be collected as a result of this legislation. Therefore, the revenue impact for counties is indeterminate. However, assuming that the court's decision stands and based on DOR's assumption of \$2.2 million (see Expenditures), this would result in increased revenue to counties of almost \$1.4 million (62.4 percent of \$2.2 million).

SOURCES:

Washington State Department of Revenue Fiscal Note

Clark Public Utilities

Grays Harbor PUD

Thurston County Superior Court Judgement Summary Case No. 05-2-02525-2