

**LEGISLATIVE FISCAL OFFICE**  
**Fiscal Note**



Fiscal Note On: **HB 94** HLS 161ES 43  
 Bill Text Version: **ORIGINAL**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

<b>Date:</b>	<b>Author:</b> MONTOUCET
<b>Dept./Agy.:</b> Revenue	<b>Analyst:</b> Greg Albrecht
<b>Subject:</b> Sales Taxation of Business Utilities	

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 Provides for the extent of the sales and use tax exemption for business utilities (Item #16)

Current law suspends the sales tax exemption to 1% of state sales tax for utilities purchased by nonresidential customers for essentially through the end of the accrual period of fiscal year 2016.

Proposed law will determine the extent of the exemption based upon the natural gas price on July 1st each year for the ensuing 12 months from the average NYMEX price per mmbtu on the close of business June 30 each year for the prior 12 months. If the price of natural gas is less than \$4.50/mmbtu then 100% of the gas sales price is subject to state sales tax; if the price is between \$4.50 and \$5.50 then 80% of the gas sales price is subject to state sales tax; if the price is between \$5.50 and \$6.50 then 60% of the gas sales price is subject to state sales tax; if the price is between \$6.50 and \$7.00 then 40% of the gas sales price is subject to state sales tax; if the price is above \$7.00 then 20% of the gas sales price is subject to state sales tax.

Effective April 1, 2016.

<b>EXPENDITURES</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>REVENUES</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>						

**EXPENDITURE EXPLANATION**

There is no anticipated direct material effect on governmental expenditures as a result of this measure.

**REVENUE EXPLANATION**

The bill appears to establish the degree of taxation of business utilities each fiscal year based on a natural gas price during the prior annual period. However, the method of price determination is not clear. The bill does not specify what price concept to look to, spot or futures, although reference to the NYMEX suggests a futures price concept. In addition, the bill appears to require prices over the past year to be utilized, but these vintage NYMEX prices are not readily available, although the NYMEX may sell its vintage data, or the U.S. Energy Information Administration may report such data but with some time lag. Thus, a July 1 determination for the fiscal year that starts on July may be difficult to achieve. For future fiscal years it may be possible to have Department analysts obtain the appropriate NYMEX data throughout the year so that the determination can be made when needed.

Regardless of the price determination discussed above, business utilities purchases would be subject to 100% of the state sales tax if the determined price is less than \$4.50/mmbtu. Presumably all 4% of current levy is intended as well as any future additional levy. Without being confident of the price determination process, current energy market conditions make it likely that 100% of the value of business utility purchases would be subject to state sales tax for much of the fiscal note horizon.

Based on current collections of the 1% levy on business utility purchases, a 4% levy will generate some \$240 million per year. However, the current levy is being protested by numerous taxpayers, and 40% of the gross collections are being paid under protest and escrowed. Protested payments are not available to fund the state budget. Assuming the taxation proposed by this bill is not protested, and that the determined price falls below \$4.50/mmbtu, full year amounts of \$240 million would be collected in FY17 - FY20 at the current 4% state sales tax rate. Most of these collections (\$238.2 million) would accrue to the state general fund, with a small amount (\$1.8 million) accruing to the Tourism Promotion District. While the bill is effective April 1, 2016 it is unclear if the price determination process can be applied to transactions between April and July 2016, and no collections of revenue are assumed to occur.

Note: The bill provides a number of definitions as well as repeals of exclusions in 47:301. The fiscal note assumes the base of business utilities currently being taxed and reflected in the estimates above are the only transactions being affected by the bill.

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| <u>Senate</u>  | <u>Dual Referral Rules</u>   | <u>House</u> |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}                  | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}                    |              |
| <input checked="" type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H} | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} |              |

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