

SENATE BILL REPORT

SB 5129

As Reported By Senate Committee On:
Ways & Means, February 16, 1995

Title: An act relating to excluding utility line clearing from the definition of retail sale.

Brief Description: Excluding utility line clearing from the definition of retail sale.

Sponsors: Senators Sheldon, McCaslin, West and Snyder; by request of Department of Revenue.

Brief History:

Committee Activity: Ways & Means: 1/31/95, 2/16/95 [DPS].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5129 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Gaspard, Hargrove, Hochstatter, Johnson, Long, Moyer, Pelz, Quigley, Roach, Sheldon, Snyder, Spanel, Strannigan, Sutherland and West.

Staff: Terry Wilson (786-7715)

Background: The sales tax is imposed on each retail sale of most articles of tangible personal property and certain services. Taxable services include construction, repair, telephone, lodging of less than 30 days, physical fitness, and some recreation and amusement services. The use tax is imposed on the use of articles of tangible personal property when the sale or acquisition has not been subject to the sales tax. The use tax commonly applies to purchases made from out-of-state firms.

In 1993, the Legislature extended the retail sales and use tax to "landscape maintenance and horticultural services except horticultural services provided to farmers." Some landscaping activity was already subject to sales tax because retail sale is defined as including the altering or improving of real property. This included the planting of trees and shrubs, the construction of walkways and pools, and the installation of lawns. However, maintenance activities were not subject to tax. These activities included lawn cutting, hedge trimming, watering, and pruning or trimming of trees and shrubs.

As a result of the 1993 changes, the business and occupation (B&O) tax classification of landscape maintenance changed from service, which was taxed at the rate of 1.5 percent, to retailing, which is taxed at the rate of 0.471 percent.

Initiative Measure No. 601 prohibits, prior to July 1, 1995, any new or increased taxes or revenue-neutral tax-shifts, unless approved by the voters at a November general election.

Summary of Substitute Bill: Pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility, is removed from the definition of retail sale. As a result of this change, these activities are no longer subject to the retail sales and use tax, and the B&O tax classification changes from retailing, which is taxed at a rate of 0.471 percent, to service, which is currently taxed at a rate of 2.09 percent.

Substitute Bill Compared to Original Bill: An intent section is added stating that the Legislature did not intend to tax this activity in 1993 and that the Department of Revenue misinterpreted legislative intent in adopting a rule extending the tax to this activity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect July 1, 1995.

Testimony For: JARRC said that taxing utility line clearing was not the intent of the Legislature. DOR requested this legislation because the taxation was the unintended result of changes in 1993. The AG said the statute required its taxation. Utilities do this for continuity of service and public safety. This activity should not be done in-house to avoid the tax. The tax would be heavy during major storms when utilities must contract a lot of work out to other companies. Telephone lines would also be covered because they are within the areas that state and federal laws require to be cleared.

Testimony Against: None.

Testified: Senator Sheldon, prime sponsor (pro); Ron Newbry, Pacificorp (pro); Dave Arbaugh, Washington Public Utility Districts Association (pro); Clarire Hesselholt, DOR (pro); Larry Gunn, Seattle City Light (pro).