

# SENATE BILL REPORT

## ESSB 5661

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As Passed Senate, March 17, 1999

**Title:** An act relating to leasehold excise tax clarification and administrative simplification.

**Brief Description:** Providing clarification and administrative simplification for the leasehold excise tax.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Rasmussen and Honeyford; by request of Department of Revenue).

**Brief History:**

**Committee Activity:** Ways & Means: 2/18/99, 2/24/99 [DPS].  
Passed Senate, 3/17/99, 48-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5661 be substituted therefor, and the substitute bill do pass.

Signed by Senators Loveland, Chair; Bauer, Vice Chair; Brown, Vice Chair; Honeyford, Kline, Kohl-Welles, Long, Rasmussen, Roach, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley and Wojahn.

**Staff:** Terry Wilson (786-7433)

**Background:** Property owned by federal, state, or local governments is exempt from the property tax. However, private lessees of government property are subject to the leasehold excise tax. The purpose of the leasehold excise tax is to impose a tax burden on persons using publicly-owned, tax-exempt property similar to the property tax that they would pay if they owned the property. The tax is collected by public entities that lease property to private parties. The tax rate is 12.84 percent of the amount paid in rent for the public property. Cities and counties may impose a local tax which is credited against the state tax.

Occupancy or use for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner is not taxable. The department does not tax permits to remove cut or picked evergreen foliage (brush picking), Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, or geothermal water and steam. The Department of Revenue has ruled administratively that certain types of federal livestock grazing permits are not taxable. However, other federal permits, as well as state livestock grazing permits, continue to be taxable.

The department has also ruled administratively that natural gas exploration leases are not taxable. It has not been determined if geothermal exploration leases are taxable.

The tax is imposed on the contract rent. For leases where rent is paid by the delivery of agricultural products, the value of the agricultural products received as rent is the value at

the place of delivery as of the 15th of the month of delivery. For all other products received as rent, the value is the value determined at the time of sale under the lease.

Leasehold interests with annual rent of less than \$250 are exempt from tax.

**Summary of Bill:** For purposes of permits to remove materials and products from public lands that are not taxable, products— is defined as natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock.

For leases where rent is paid by the delivery of agricultural products, the value of the agricultural products received as rent is the value at the time of delivery.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** DOR has developed this bill after doing a thorough review. DOR is also in the rules review and rule-making process on this issue. There have been many appeals over the last 25 years. There has been some inconsistent treatment. This is an effort to rectify that. The intent of the law is to include possession and use, not possession or use. Permits shouldn't be taxed unless they rise to the status of a lease. DOR has erred in taxing backpackers and day use. This simplifies product leases and provides uniform application to grazing permits. Inflation would increase the \$250 exemption to \$800. The ports have many tenants who pay the tax. The tax applies to pass through charges but this is inappropriate because it does not represent the underlying value of the land. The tax should not apply to noncommercial recreational permits on federal forest land.

**Testimony Against:** None.

**Testified:** PRO: Tim Sekerak, Margaret Partlow, DOR; Pat Jones, Public Ports Assn.; Donald Barovic, citizen.

**House Amendment(s):** For leases where rent is paid by the delivery of agricultural products, the value of the agricultural products received as rent is the value at the time of sale rather than delivery.

For purposes of permits to remove materials and products from public lands that are not taxable, products— is defined to include but not be limited to natural resource products.