

SSB 5356 - H AMD 651

By Representative Dunshee

NOT CONSIDERED 04/22/2011

1 On page 2, line 28, after "(4)" insert "The department shall ensure  
2 that all cougar pelts or carcasses harvested under the pilot program  
3 authorized by this section are individually marked as having been  
4 hunted with the aid of dogs.

5 (5)"

6 On page 3, after line 21, insert the following:

7 "Sec. 4. RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and  
8 2010 c 106 s 202 are each reenacted and amended to read as follows:

9 (1)(a) "Sale at retail" or "retail sale" means every sale of  
10 tangible personal property (including articles produced, fabricated, or  
11 imprinted) to all persons irrespective of the nature of their business  
12 and including, among others, without limiting the scope hereof, persons  
13 who install, repair, clean, alter, improve, construct, or decorate real  
14 or personal property of or for consumers other than a sale to a person  
15 who:

16 (i) Purchases for the purpose of resale as tangible personal  
17 property in the regular course of business without intervening use by  
18 such person, but a purchase for the purpose of resale by a regional  
19 transit authority under RCW 81.112.300 is not a sale for resale; or

20 (ii) Installs, repairs, cleans, alters, imprints, improves,  
21 constructs, or decorates real or personal property of or for consumers,  
22 if such tangible personal property becomes an ingredient or component  
23 of such real or personal property without intervening use by such  
24 person; or

25 (iii) Purchases for the purpose of consuming the property purchased  
26 in producing for sale as a new article of tangible personal property or  
27 substance, of which such property becomes an ingredient or component or  
28 is a chemical used in processing, when the primary purpose of such

1 chemical is to create a chemical reaction directly through contact with  
2 an ingredient of a new article being produced for sale; or

3 (iv) Purchases for the purpose of consuming the property purchased  
4 in producing ferrosilicon which is subsequently used in producing  
5 magnesium for sale, if the primary purpose of such property is to  
6 create a chemical reaction directly through contact with an ingredient  
7 of ferrosilicon; or

8 (v) Purchases for the purpose of providing the property to  
9 consumers as part of competitive telephone service, as defined in RCW  
10 82.04.065; or

11 (vi) Purchases for the purpose of satisfying the person's  
12 obligations under an extended warranty as defined in subsection (7) of  
13 this section, if such tangible personal property replaces or becomes an  
14 ingredient or component of property covered by the extended warranty  
15 without intervening use by such person.

16 (b) The term includes every sale of tangible personal property that  
17 is used or consumed or to be used or consumed in the performance of any  
18 activity defined as a "sale at retail" or "retail sale" even though  
19 such property is resold or used as provided in (a)(i) through (vi) of  
20 this subsection following such use.

21 (c) The term also means every sale of tangible personal property to  
22 persons engaged in any business that is taxable under RCW 82.04.280  
23 (1), (2), and (7), 82.04.290, and 82.04.2908.

24 (2) The term "sale at retail" or "retail sale" includes the sale of  
25 or charge made for tangible personal property consumed and/or for labor  
26 and services rendered in respect to the following:

27 (a) The installing, repairing, cleaning, altering, imprinting, or  
28 improving of tangible personal property of or for consumers, including  
29 charges made for the mere use of facilities in respect thereto, but  
30 excluding charges made for the use of self-service laundry facilities,  
31 and also excluding sales of laundry service to nonprofit health care  
32 facilities, and excluding services rendered in respect to live animals,  
33 birds and insects;

34 (b) The constructing, repairing, decorating, or improving of new or  
35 existing buildings or other structures under, upon, or above real  
36 property of or for consumers, including the installing or attaching of  
37 any article of tangible personal property therein or thereto, whether  
38 or not such personal property becomes a part of the realty by virtue of

1 installation, and also includes the sale of services or charges made  
2 for the clearing of land and the moving of earth excepting the mere  
3 leveling of land used in commercial farming or agriculture;

4 (c) The constructing, repairing, or improving of any structure  
5 upon, above, or under any real property owned by an owner who conveys  
6 the property by title, possession, or any other means to the person  
7 performing such construction, repair, or improvement for the purpose of  
8 performing such construction, repair, or improvement and the property  
9 is then reconveyed by title, possession, or any other means to the  
10 original owner;

11 (d) The cleaning, fumigating, razing, or moving of existing  
12 buildings or structures, but does not include the charge made for  
13 janitorial services; and for purposes of this section the term  
14 "janitorial services" means those cleaning and caretaking services  
15 ordinarily performed by commercial janitor service businesses  
16 including, but not limited to, wall and window washing, floor cleaning  
17 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
18 The term "janitorial services" does not include painting, papering,  
19 repairing, furnace or septic tank cleaning, snow removal or  
20 sandblasting;

21 (e) Automobile towing and similar automotive transportation  
22 services, but not in respect to those required to report and pay taxes  
23 under chapter 82.16 RCW;

24 (f) The furnishing of lodging and all other services by a hotel,  
25 rooming house, tourist court, motel, trailer camp, and the granting of  
26 any similar license to use real property, as distinguished from the  
27 renting or leasing of real property, and it is presumed that the  
28 occupancy of real property for a continuous period of one month or more  
29 constitutes a rental or lease of real property and not a mere license  
30 to use or enjoy the same. For the purposes of this subsection, it is  
31 presumed that the sale of and charge made for the furnishing of lodging  
32 for a continuous period of one month or more to a person is a rental or  
33 lease of real property and not a mere license to enjoy the same;

34 (g) The installing, repairing, altering, or improving of digital  
35 goods for consumers;

36 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of  
37 this subsection when such sales or charges are for property, labor and  
38 services which are used or consumed in whole or in part by such persons

1 in the performance of any activity defined as a "sale at retail" or  
2 "retail sale" even though such property, labor and services may be  
3 resold after such use or consumption. Nothing contained in this  
4 subsection may be construed to modify subsection (1) of this section  
5 and nothing contained in subsection (1) of this section may be  
6 construed to modify this subsection.

7 (3) The term "sale at retail" or "retail sale" includes the sale of  
8 or charge made for personal, business, or professional services  
9 including amounts designated as interest, rents, fees, admission, and  
10 other service emoluments however designated, received by persons  
11 engaging in the following business activities:

12 (a) Amusement and recreation services including but not limited to  
13 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
14 for sightseeing purposes, and others, when provided to consumers;

15 (b) Abstract, title insurance, and escrow services;

16 (c) Credit bureau services;

17 (d) Automobile parking and storage garage services;

18 (e) Landscape maintenance and horticultural services but excluding  
19 (i) horticultural services provided to farmers and (ii) pruning,  
20 trimming, repairing, removing, and clearing of trees and brush near  
21 electric transmission or distribution lines or equipment, if performed  
22 by or at the direction of an electric utility;

23 (f) Service charges associated with tickets to professional  
24 sporting events; (~~and~~)

25 (g) The following personal services: Physical fitness services,  
26 tanning salon services, tattoo parlor services, steam bath services,  
27 turkish bath services, escort services, and dating services; and

28 (h) Taxidermy services when the animal subject to the service is a  
29 cougar that was harvested with the use of dogs under the pilot program  
30 authorized in section 1 of this act. All revenues collected under this  
31 subsection must be deposited into the state wildlife account created in  
32 RCW 77.12.170 and used according to the provisions of RCW 77.12.170.

33 (4)(a) The term also includes the renting or leasing of tangible  
34 personal property to consumers.

35 (b) The term does not include the renting or leasing of tangible  
36 personal property where the lease or rental is for the purpose of  
37 sublease or subrent.

1 (5) The term also includes the providing of "competitive telephone  
2 service," "telecommunications service," or "ancillary services," as  
3 those terms are defined in RCW 82.04.065, to consumers.

4 (6)(a) The term also includes the sale of prewritten computer  
5 software to a consumer, regardless of the method of delivery to the end  
6 user. For purposes of this subsection (6)(a), the sale of prewritten  
7 computer software includes the sale of or charge made for a key or an  
8 enabling or activation code, where the key or code is required to  
9 activate prewritten computer software and put the software into use.  
10 There is no separate sale of the key or code from the prewritten  
11 computer software, regardless of how the sale may be characterized by  
12 the vendor or by the purchaser.

13 The term "retail sale" does not include the sale of or charge made  
14 for:

15 (i) Custom software; or

16 (ii) The customization of prewritten computer software.

17 (b)(i) The term also includes the charge made to consumers for the  
18 right to access and use prewritten computer software, where possession  
19 of the software is maintained by the seller or a third party,  
20 regardless of whether the charge for the service is on a per use, per  
21 user, per license, subscription, or some other basis.

22 (ii)(A) The service described in (b)(i) of this subsection (6)  
23 includes the right to access and use prewritten computer software to  
24 perform data processing.

25 (B) For purposes of this subsection (6)(b)(ii), "data processing"  
26 means the systematic performance of operations on data to extract the  
27 required information in an appropriate form or to convert the data to  
28 usable information. Data processing includes check processing, image  
29 processing, form processing, survey processing, payroll processing,  
30 claim processing, and similar activities.

31 (7) The term also includes the sale of or charge made for an  
32 extended warranty to a consumer. For purposes of this subsection,  
33 "extended warranty" means an agreement for a specified duration to  
34 perform the replacement or repair of tangible personal property at no  
35 additional charge or a reduced charge for tangible personal property,  
36 labor, or both, or to provide indemnification for the replacement or  
37 repair of tangible personal property, based on the occurrence of  
38 specified events. The term "extended warranty" does not include an

1 agreement, otherwise meeting the definition of extended warranty in  
2 this subsection, if no separate charge is made for the agreement and  
3 the value of the agreement is included in the sales price of the  
4 tangible personal property covered by the agreement. For purposes of  
5 this subsection, "sales price" has the same meaning as in RCW  
6 82.08.010.

7 (8)(a) The term also includes the following sales to consumers of  
8 digital goods, digital codes, and digital automated services:

9 (i) Sales in which the seller has granted the purchaser the right  
10 of permanent use;

11 (ii) Sales in which the seller has granted the purchaser a right of  
12 use that is less than permanent;

13 (iii) Sales in which the purchaser is not obligated to make  
14 continued payment as a condition of the sale; and

15 (iv) Sales in which the purchaser is obligated to make continued  
16 payment as a condition of the sale.

17 (b) A retail sale of digital goods, digital codes, or digital  
18 automated services under this subsection (8) includes any services  
19 provided by the seller exclusively in connection with the digital  
20 goods, digital codes, or digital automated services, whether or not a  
21 separate charge is made for such services.

22 (c) For purposes of this subsection, "permanent" means perpetual or  
23 for an indefinite or unspecified length of time. A right of permanent  
24 use is presumed to have been granted unless the agreement between the  
25 seller and the purchaser specifies or the circumstances surrounding the  
26 transaction suggest or indicate that the right to use terminates on the  
27 occurrence of a condition subsequent.

28 (9) The term also includes the charge made for providing tangible  
29 personal property along with an operator for a fixed or indeterminate  
30 period of time. A consideration of this is that the operator is  
31 necessary for the tangible personal property to perform as designed.  
32 For the purpose of this subsection (9), an operator must do more than  
33 maintain, inspect, or set up the tangible personal property.

34 (10) The term does not include the sale of or charge made for labor  
35 and services rendered in respect to the building, repairing, or  
36 improving of any street, place, road, highway, easement, right-of-way,  
37 mass public transportation terminal or parking facility, bridge,  
38 tunnel, or trestle which is owned by a municipal corporation or

1 political subdivision of the state or by the United States and which is  
2 used or to be used primarily for foot or vehicular traffic including  
3 mass transportation vehicles of any kind.

4 (11) The term also does not include sales of chemical sprays or  
5 washes to persons for the purpose of postharvest treatment of fruit for  
6 the prevention of scald, fungus, mold, or decay, nor does it include  
7 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
8 pollination including insects such as bees, and spray materials to:

9 (a) Persons who participate in the federal conservation reserve  
10 program, the environmental quality incentives program, the wetlands  
11 reserve program, and the wildlife habitat incentives program, or their  
12 successors administered by the United States department of agriculture;

13 (b) farmers for the purpose of producing for sale any agricultural  
14 product; and (c) farmers acting under cooperative habitat development  
15 or access contracts with an organization exempt from federal income tax  
16 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or  
17 the Washington state department of fish and wildlife to produce or  
18 improve wildlife habitat on land that the farmer owns or leases.

19 (12) The term does not include the sale of or charge made for labor  
20 and services rendered in respect to the constructing, repairing,  
21 decorating, or improving of new or existing buildings or other  
22 structures under, upon, or above real property of or for the United  
23 States, any instrumentality thereof, or a county or city housing  
24 authority created pursuant to chapter 35.82 RCW, including the  
25 installing, or attaching of any article of tangible personal property  
26 therein or thereto, whether or not such personal property becomes a  
27 part of the realty by virtue of installation. Nor does the term  
28 include the sale of services or charges made for the clearing of land  
29 and the moving of earth of or for the United States, any  
30 instrumentality thereof, or a county or city housing authority. Nor  
31 does the term include the sale of services or charges made for cleaning  
32 up for the United States, or its instrumentalities, radioactive waste  
33 and other by-products of weapons production and nuclear research and  
34 development.

35 (13) The term does not include the sale of or charge made for  
36 labor, services, or tangible personal property pursuant to agreements  
37 providing maintenance services for bus, rail, or rail fixed guideway

1 equipment when a regional transit authority is the recipient of the  
2 labor, services, or tangible personal property, and a transit agency,  
3 as defined in RCW 81.104.015, performs the labor or services.

4 (14) The term does not include the sale for resale of any service  
5 described in this section if the sale would otherwise constitute a  
6 "sale at retail" and "retail sale" under this section.

7 **Sec. 5.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each  
8 amended to read as follows:

9 (1) There is levied and collected from every person in this state  
10 a tax or excise for the privilege of using within this state as a  
11 consumer any:

12 (a) Article of tangible personal property acquired by the user in  
13 any manner, including tangible personal property acquired at a casual  
14 or isolated sale, and including by-products used by the manufacturer  
15 thereof, except as otherwise provided in this chapter, irrespective of  
16 whether the article or similar articles are manufactured or are  
17 available for purchase within this state;

18 (b) Prewritten computer software, regardless of the method of  
19 delivery, but excluding prewritten computer software that is either  
20 provided free of charge or is provided for temporary use in viewing  
21 information, or both;

22 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or  
23 (g), (3) (a) or (h), or (6)(b), excluding services defined as a retail  
24 sale in RCW 82.04.050(6)(b) that are provided free of charge;

25 (d) Extended warranty; or

26 (e)(i) Digital good, digital code, or digital automated service,  
27 including the use of any services provided by a seller exclusively in  
28 connection with digital goods, digital codes, or digital automated  
29 services, whether or not a separate charge is made for such services.

30 (ii) With respect to the use of digital goods, digital automated  
31 services, and digital codes acquired by purchase, the tax imposed in  
32 this subsection (1)(e) applies in respect to:

33 (A) Sales in which the seller has granted the purchaser the right  
34 of permanent use;

35 (B) Sales in which the seller has granted the purchaser a right of  
36 use that is less than permanent;



1 (C) Sales in which the purchaser is not obligated to make continued  
2 payment as a condition of the sale; and

3 (D) Sales in which the purchaser is obligated to make continued  
4 payment as a condition of the sale.

5 (iii) With respect to digital goods, digital automated services,  
6 and digital codes acquired other than by purchase, the tax imposed in  
7 this subsection (1)(e) applies regardless of whether or not the  
8 consumer has a right of permanent use or is obligated to make continued  
9 payment as a condition of use.

10 (2) The provisions of this chapter do not apply in respect to the  
11 use of any article of tangible personal property, extended warranty,  
12 digital good, digital code, digital automated service, or service  
13 taxable under RCW 82.04.050 (2) (a) or (g), (3) (a) or (h), or (6)(b),  
14 if the sale to, or the use by, the present user or the present user's  
15 bailor or donor has already been subjected to the tax under chapter  
16 82.08 RCW or this chapter and the tax has been paid by the present user  
17 or by the present user's bailor or donor.

18 (3)(a) Except as provided in this section, payment of the tax  
19 imposed by this chapter or chapter 82.08 RCW by one purchaser or user  
20 of tangible personal property, extended warranty, digital good, digital  
21 code, digital automated service, or other service does not have the  
22 effect of exempting any other purchaser or user of the same property,  
23 extended warranty, digital good, digital code, digital automated  
24 service, or other service from the taxes imposed by such chapters.

25 (b) The tax imposed by this chapter does not apply:

26 (i) If the sale to, or the use by, the present user or his or her  
27 bailor or donor has already been subjected to the tax under chapter  
28 82.08 RCW or this chapter and the tax has been paid by the present user  
29 or by his or her bailor or donor;

30 (ii) In respect to the use of any article of tangible personal  
31 property acquired by bailment and the tax has once been paid based on  
32 reasonable rental as determined by RCW 82.12.060 measured by the value  
33 of the article at time of first use multiplied by the tax rate imposed  
34 by chapter 82.08 RCW or this chapter as of the time of first use;

35 (iii) In respect to the use of any article of tangible personal  
36 property acquired by bailment, if the property was acquired by a  
37 previous bailee from the same bailor for use in the same general  
38 activity and the original bailment was prior to June 9, 1961; or

1 (iv) To the use of digital goods or digital automated services,  
2 which were obtained through the use of a digital code, if the sale of  
3 the digital code to, or the use of the digital code by, the present  
4 user or the present user's bailor or donor has already been subjected  
5 to the tax under chapter 82.08 RCW or this chapter and the tax has been  
6 paid by the present user or by the present user's bailor or donor.

7 (4)(a) Except as provided in (b) of this subsection (4), the tax is  
8 levied and must be collected in an amount equal to the value of the  
9 article used, value of the digital good or digital code used, value of  
10 the extended warranty used, or value of the service used by the  
11 taxpayer, multiplied by the applicable rates in effect for the retail  
12 sales tax under RCW 82.08.020.

13 (b) In the case of a seller required to collect use tax from the  
14 purchaser, the tax must be collected in an amount equal to the purchase  
15 price multiplied by the applicable rate in effect for the retail sales  
16 tax under RCW 82.08.020.

17 (5) For purposes of the tax imposed in this section, "person"  
18 includes anyone within the definition of "buyer," "purchaser," and  
19 "consumer" in RCW 82.08.010.

20 **Sec. 6.** RCW 77.12.170 and 2009 c 333 s 13 are each amended to read  
21 as follows:

22 (1) There is established in the state treasury the state wildlife  
23 account which consists of moneys received from:

24 (a) Rentals or concessions of the department;

25 (b) The sale of real or personal property held for department  
26 purposes, unless the property is seized or recovered through a fish,  
27 shellfish, or wildlife enforcement action;

28 (c) The assessment of administrative penalties, and the sale of  
29 licenses, permits, tags, and stamps required by chapter 77.32 RCW and  
30 RCW 77.65.490, except annual resident adult saltwater and all annual  
31 razor clam and shellfish licenses, which shall be deposited into the  
32 state general fund;

33 (d) Fees for informational materials published by the department;

34 (e) Fees for personalized vehicle, Wild on Washington, and  
35 Endangered Wildlife license plates and Washington's Wildlife license  
36 plate collection as provided in chapter (~~46.16~~) 46.17 RCW;

37 (f) Articles or wildlife sold by the director under this title;

1 (g) Compensation for damage to department property or wildlife  
2 losses or contributions, gifts, or grants received under RCW 77.12.320.  
3 However, this excludes fish and shellfish overages, and court-ordered  
4 restitution or donations associated with any fish, shellfish, or  
5 wildlife enforcement action, as such moneys must be deposited pursuant  
6 to RCW 77.15.425;

7 (h) Excise tax on anadromous game fish collected under chapter  
8 82.27 RCW;

9 (i) The department's share of revenues from auctions and raffles  
10 authorized by the commission; (~~and~~)

11 (j) The sale of watchable wildlife decals under RCW 77.32.560;

12 (k) Revenues generated from the taxes on taxidermy created in RCW  
13 82.04.050 and 82.12.020.

14 (2) State and county officers receiving any moneys listed in  
15 subsection (1) of this section shall deposit them in the state treasury  
16 to be credited to the state wildlife account.

17 (3) All deposits to the state wildlife account from the sources  
18 identified in subsection (1)(k) of this section must be used by the  
19 department solely to provide payments for claims for damage to  
20 commercial livestock under chapter 77.36 RCW when the damage is  
21 confirmed by the department to have been caused by a cougar.

22 **Sec. 7.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to  
23 read as follows:

24 A credit is allowed against the taxes imposed by this chapter upon  
25 the use in this state of tangible personal property, extended warranty,  
26 digital good, digital code, digital automated service, or services  
27 defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3) (a) or  
28 (h), or (6)(b), in the amount that the present user thereof or his or  
29 her bailor or donor has paid a legally imposed retail sales or use tax  
30 with respect to such property, extended warranty, digital good, digital  
31 code, digital automated service, or service defined as a retail sale in  
32 RCW 82.04.050 (2) (a) or (g), (3) (a) or (h), or (6)(b) to any other  
33 state, possession, territory, or commonwealth of the United States, any  
34 political subdivision thereof, the District of Columbia, and any  
35 foreign country or political subdivision thereof."

36 Renumber the remaining section consecutively, correct any internal  
37 references accordingly, and correct the title.

EFFECT: Extends the sales and use tax to taxidermy services when the animal subject to taxidermy is a cougar harvested with the aid of dogs through the cougar hunting pilot program; dedicates all revenue generated through these sales and use taxes to the state wildlife fund to be used for the purposes of paying claims to the owners of injured or killed commercial livestock when the damage was caused by a cougar.

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