

SENATE BILL REPORT

SB 6250

As Passed Senate, March 8, 2012

Title: An act relating to clarifying the definition of leasehold interest.

Brief Description: Clarifying the definition of leasehold interest.

Sponsors: Senators Regala, Carrell, Conway, Kilmer, Becker, Roach and Kastama.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/26/12, 1/30/12 [DP-WM].

Ways & Means: 2/20/12, 2/27/12 [DP].

Passed Senate: 3/08/12, 49-0.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase, Nelson and Roach.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Brown, Conway, Fraser, Harper, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Kastama, Keiser, Kohl-Welles, Padden, Pridemore, Regala, Schoesler and Tom.

Staff: Dianne Criswell (786-7433)

Background: While government-owned property is exempt from property tax, private lessees of that property may be subject to a leasehold excise tax (LET), levied at 12.84 percent of the rent. Historically, pursuant to a 1979 determination by the state Department of Revenue (DOR), port districts have not been required to collect the LET from port tenants leasing wharf facilities on a non-exclusive, preferential use basis. Recently, DOR determined

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that preferential use leases provided substantial possession, use, and control of the property to these tenants. Thus, DOR concluded that these types of leasehold interests were subject to LET, since they provided substantial control of the property.

Summary of Bill: Leasehold interests subject to LET do not include the preferential use of publicly-owned cargo cranes and docks and associated areas used in loading and discharging of cargo at a port district marine facility. Preferential use means use by a private party under a written agreement with the public owner in which the public owner or a third party maintains a right to use the property when it is not being used by the private party.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Government Operations, Tribal Relations & Elections): PRO: This bill clarifies that a longstanding interpretation of the law is retained. Businesses facing potential imposition of this tax could decide to go to out-of-state ports instead of Washington ports, causing the state to lose jobs and other tax revenue that these businesses generate. This bill will remove uncertainty and allow Washington ports to remain competitive with out-of-state ports, particularly with respect to shipping of agricultural products. Port districts worked with DOR to develop language in the bill.

Persons Testifying (Government Operations, Tribal Relations & Elections): PRO: Senator Regala, prime sponsor; Don Meyer, Lisa Thatcher, Port of Tacoma; John Creighton, Port of Seattle.

Staff Summary of Public Testimony (Ways & Means): PRO: Washington is a trade dependent state. Washington benefits from being the closest major port to Asia. A lot of cargo in Washington's marine terminals is discretionary and, thus, could be routed through other ports in the United States, Canada, or even Central America. We have never collected LET on these leases until now. Collecting LET will increase costs, and may make Washington less competitive. Washington's agricultural production is one of the largest sectors of our state's economy. Agricultural producers are price takers, not price makers; they are dependent on international trade, which is very price sensitive. Discretionary cargo creates empty containers for Washington's agricultural products. This bill clarifies the types of leasehold interests subject to LET and codifies historical practices. There is increasing competition among ports, based on costs, reliability, and predictability; increased costs from LET could adversely impact this industry and related industries in Washington by diverting cargo elsewhere. We are uncertain of the LET impacts reported on the fiscal note, because these activities generate family wage jobs and revenues from taxes (business and occupation tax, public utility tax, sales tax, property tax), which could be jeopardized. There are some concerns about the opinions from the Attorney General's Office that these leases allow substantial use; that is not the practice in the ports of Seattle and Tacoma.

Persons Testifying (Ways & Means): PRO: Senator Regala, prime sponsor; Tom Davis, WA State Farm Bureau; Dave Ducharme, Yakima Valley Growers and Suppliers; Don Meyer, Port of Tacoma; John Creighton, Port of Seattle; Alec Coleman, WA United Terminals; Scott Mason, ILWU Local 23.