

SENATE BILL REPORT

SB 6136

As Reported by Senate Committee On:
Housing, January 24, 2024

Title: An act relating to a business and occupation tax on the privilege of providing property for rent and supporting access to affordable rental property by exempting from tax landlords participating in a rent stabilization program.

Brief Description: Reestablishing a business and occupation tax on the privilege of providing property for rent and supporting access to affordable rental property by exempting from tax landlords participating in a rent stabilization program. [**Revised for 1st Substitute:** Reestablishing a business and occupation tax on the privilege of providing property for rent.]

Sponsors: Senators Kuderer, Frame, Hasegawa, Lovelett, Nobles, Saldaña and Wellman.

Brief History:

Committee Activity: Housing: 1/17/24, 1/24/24 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Makes the privilege of providing property for rent subject to the business and occupation tax.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 6136 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Cleveland, Saldaña, Shewmake and Trudeau.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Braun, Gildon, Rivers and Wilson, J..

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Samantha Doyle (786-7335)

Background: Business and Occupation Tax. The state business and occupation (B&O) tax is Washington's primary business tax. It is a gross receipts tax measured on the value of products, gross proceeds of sale, or gross income of the business. There are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by classification or activity. The major rates are: 0.471 percent for retailing activities, 0.484 percent for manufacturing and wholesaling activities, and for service and other activities, either 1.5 percent or 1.75 percent, depending upon the amount of annual gross income of the business. The state B&O tax includes a number of preferential tax rates, credits, exemptions, and deductions as well as several increased rates or surcharges.

Taxing Rental Real Estate. In 1935 state law included a prohibition against taxing income from the rental of real estate. In 1959 the law was amended to subject the rental of real estate to B&O tax at a rate of 0.25 percent. The following year the Washington State Supreme Court determined this to be non-uniform taxation and ruled the tax to be unconstitutional in *Apartment Operators Association of Seattle v. Schumacher*. The Washington State Supreme Court later questioned the validity of *Schumacher*, but never specifically overturned the holding.

Home Security Fund. The Home Security Fund is used by the Department of Commerce (Commerce) to manage the state homeless housing programs, issue private rental housing payments, and provide housing and shelter support. The Eviction Prevention Rental Assistance Program is one of several housing programs administered by Commerce. Monies in the account consist of document recording surcharges and appropriations from the Legislature.

Summary of Bill (First Substitute): Business and Occupation Tax. Any person engaging in the business of providing property for rent is subject to B&O tax. The tax on residential and commercial rental properties begins January 1, 2025.

The measure of tax is the gross proceeds from rent multiplied by a rate of either 1.5 or 1.75 percent for taxable activities of \$1 million or more in the prior year.

All revenue from the tax on providing property for rent must be deposited into the Home Security Fund to support the Eviction Prevention Rental Assistance Program.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Removes the requirement that Commerce develop and administer a residential rent stabilization and certification program.
- Removes the requirement that Commerce make recommendations to the Legislature by December 1, 2025, for a commercial rental property rent stabilization program.
- Removes the B&O tax exemption for landlords that limit rent increases to no more

than 5 percent, as certified by Commerce.

- Removes the tax preference performance statement.
- Makes the B&O tax on commercial rental property effective January 1, 2025.
- Specifies that the B&O tax on rental property does not apply to a municipal corporation, political subdivision, or taxable rent subject to the leasehold excise tax.
- Modifies the title and intent section.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill closes a preferential tax loophole. Excessive rent increases and homelessness is costly to everyone. Please consider making nonvoluntary. We also appreciate the definition of rent as including monthly fees. We applaud the introductory statement, however, are concerned about the voluntary nature of the bill as it may lead to landlords passing the tax onto tenants. Tenants would need the passage of SB 5961 to make sure this does not happen.

One of our members received a \$300 rent increase or 58 percent and could barely afford needs after rent. Please stand with renters and small business owners. Landlords should not be getting preferential tax treatment in this state. Tenants desperately need rent protection now. Please make this bill more aligned with SB 5961. As a small business owner, I must plan accordingly for taxes. I pay my taxes, why shouldn't landlords? Washington has a lot of people of color and specifically black and brown renters facing housing instability and disproportionately facing evictions. The status quo perpetuates racial disparities.

CON: Rent control does not work here or anywhere. If enacted, I would sell my properties and invest outside of Washington. As a small housing provider, this tax would make rent more expensive than it already is with so many maintenance expenses. My costs have increased as much as 30 percent each month. Landlords should not have this tax imposed because it keeps costs down for our tenants. Any savings for me is a savings for them. I am trying to provide affordable housing for my community. I am asking for more carrots and supports instead of caps and taxes. Rent control leads to urban decay wherever it exists.

This bill will affect small landlords the most. Most small rental units run on a small profit margin. This will result in fewer units. This arbitrary number does not cover the rising costs to provide housing. This bill creates a choice of two unappetizing choices. It will result in at least 5 percent increases every year.

We oversee manufactured/mobile home communities, and we provide affordable housing but would not exempt. Washington is in a housing shortage, needing approximately 1 million units by 2040. This bill would disincentivize needed investment. This bill would tax me on services that I would have to provide, but not be able to recoup the costs for. I am currently moving my investments out of state to invest in a state that has fewer regulations. It is globally easier in other states due to ease of permitting and other regulations. I am already taxed at the federal level, please consider making the tax be on net. This bill would be unconstitutional based on unequal protections. This is a double tax and will result in increasing all costs in Washington.

OTHER: We appreciate the chair working with the ports to modify the definition of person to exclude commercial properties managed by the port and other municipalities. Largest costs for landlords is often property taxes. This is especially true when property improvements are made. Additionally, difficult if having to obtain a loan and interest rates are high right now. This bill would make upgrades incredibly difficult. It would put several people out of business.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Matthew Lang, Transit Riders Union; Ishbel Dickens, Assoc of Manufactured Home Owners; Terri Anderson, Tenants Union of Washington State; Edith Baltazar, Firelands Workers Action/Acción de Trabajadores; Kate Rubin, Be:Seattle; Michele Thomas, Washington Low Income Housing Alliance; Debbie Lacy, Eastside For All; Talauna Reed, Tenants Union of Washington State.

CON: Christina Nelson, TBPM; Constance Nelson; Jeannette Mcchesney; Doug Anderson; Geoffrey Arthur, Northwest Realty Associates, LLC; Bruce Becker; Ryan Erickson, Commonwealth Real Estate; William Shadbolt, Washington Business Properties Association; Patricia Hoendermis, Yakima Valley Landlords Assoc.; Ian Randall; Sheri Druckman, Legacy Partners; carl haglund, Columbia Modern Living; Tim Eyman, Initiative Activist; Alex Arwine; Jake Bond, GSC Investments; Christa Connolly, MHCW; Mike Simonitch, Shelter Properties; Debby Herbert; Beth Daranciang; Larry Seto.

OTHER: RUSS MILLARD, Signature Home Sales, LLC; John Flanagan, Port of Seattle.

Persons Signed In To Testify But Not Testifying: CON: carl haglund; RUSS MILLARD, LEISURE ESTATES LLC; Jennifer Lekisch.