

6470-S

Sponsor(s): Senate Committee on Ways & Means (originally sponsored by Senators West, Anderson, Kohl, Snyder, Loveland, Fairley, T. Sheldon and Jacobsen; by request of Governor Locke)

Brief Title: Specifying the tax treatment of canned and custom software.

SB 6470-S.E - DIGEST

(DIGEST AS ENACTED)

Declares that the intent of this act is to make the tax treatment of software clear and certain for developers, programmers, and consumers.

Declares that the creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

Declares that the customization of canned software is a service taxable under RCW 82.04.290(2).

Revises RCW 82.04.060 to provide that "sale at wholesale" or "wholesale sale" means any sale of canned software.

Revises RCW 82.12.020 to provide that there is levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any canned software, regardless of the method of delivery, but excluding canned software that is either provided free of charge or is provided for temporary use in viewing information, or both.

VETO MESSAGE ON SB 6470-S

April 3, 1998

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to section 8, Engrossed Substitute Senate Bill No. 6470 entitled:

"AN ACT Relating to the tax treatment of canned and custom software;"

Sections 1 through 7 of ESSB 6470 specify that the sale of custom software is the provision of a service, as is the customization of canned software, and is taxable under the service classification of the business and occupation (B&O) tax.

Section 8 of this bill would provide a B&O tax credit for software businesses that have their principal place of business in a distressed county. However, the bill as written, would allow a qualifying software company with headquarters in a distressed county to also exempt from the B&O tax all its operations located in a non-distressed county. This could lead to a business establishing only a small office with few employees in the distressed county, defeating the purpose of the legislation. While Section 8 was intended to provide an innovative approach to rural economic development, this language results in a significant tax

loophole that will not benefit the citizens of rural distressed counties.

I proposed several economic development packages for distressed counties in the 1998 legislative session, and I strongly agree with the concept presented in section 8 of this bill. However, section 8 of this bill would have unintended consequences. I would support a more finely crafted bill.

For these reasons, I have vetoed section 8 of Engrossed Substitute Senate Bill No. 6470.

With the exception of section 8, Engrossed Substitute Senate Bill No. 6470 is approved.

Respectfully submitted,
Gary Locke
Governor