

HOUSE BILL REPORT

HB 1173

As Reported By House Committee On:

Criminal Justice & Corrections

Title: An act relating to exempting jail construction from sales and use taxes.

Brief Description: Exempting jail construction from sales and use taxes.

Sponsors: Representatives Cairnes, O'Brien, Ballasiotes, Barlean, Morris, DeBolt, Mielke, Campbell, Buck, Ericksen, Benson, Koster, Keiser, Cooper, G. Chandler, Mulliken, Dunshee, Stensen, Boldt, D. Schmidt, Dunn, Conway and Esser.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/3/99, 2/10/99 [DP].

Brief Summary of Bill

- Exempts construction materials used in the construction of jails operated by local governments from sales and use tax.
- Exempts charges for labor and services rendered in constructing jails for local governments from sales tax.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

Background:

The sales tax is imposed on retail sales of most items of tangible personal property and some services. Use tax is imposed on the use of an item in this state, when the acquisition of the item or service has not been subject to sales tax. The combined state and local sales and use tax rate is between 7 percent and 8.6 percent, depending on

location. Washington law does not provide a general exemption from retail sales and use taxes for government agencies.

Generally, state and local governments pay sales tax on the full contract prices for their construction projects. The full contract price includes charges for construction materials, labor, and services rendered. Construction materials are subject to sales and use tax. Charges for labor and services rendered to construct, repair, or improve new or existing buildings are subject to sales tax.

Local governments are exempt from paying sales tax on one type of construction activity. Labor and services associated with a local government's road construction projects are exempt from sales tax, but road construction materials are subject to sales tax.

Summary of Bill:

Construction materials used in the construction of jails operated by local governments are exempted from sales and use tax. Charges for labor and services rendered in constructing jails for local governments are also exempted from sales tax.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: None.

Testimony Against: There are so many other kinds of facilities that provide benefits to the community (i.e. libraries, hospitals, police stations, and fire stations) that the state should not single out one type of construction over any other for tax exemption purposes.

The larger problem of this bill is, if passed, that it could jeopardize the state's ability to tax material used in federal construction projects. This could potentially result in a loss of state sales and use tax revenues of \$38 million per year and an additional loss of \$10 million per year in local sales and use tax.

In most construction projects, the contractor pays no sales or use tax on materials. Instead, the landowner is treated as a "consumer" and pays the sales tax on the gross contract price which includes the materials and labor.

Because of the Supremacy Clause of the United States Constitution, the state cannot require the federal government to pay sales tax. However, the state can hold federal

contractors liable for sales or use tax on materials incorporated in a federal project. The federal contractor passes the cost of the tax on to the federal government through an increased contract price, but this does not violate the Supremacy Clause because it is not a direct tax on the federal government.

Providing local governments with a complete sales and use tax exemption for jail construction would make them "better off" than the federal government. This could result in the federal government litigating Washington and putting substantial state and local sales and use tax revenues at risk.

Testified: (Opposed) Ron Rosenbloom, Association of Washington Cities; and Doug Levy, City of Everett.