

# SENATE BILL REPORT

## SB 5464

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As Reported By Senate Committee On:  
Technology & Communications, February 6, 2003  
Ways & Means, February 27, 2003

**Title:** An act relating to local government business and occupation tax on intellectual property.

**Brief Description:** Prohibiting local governments from imposing business and occupation tax on intellectual property.

**Sponsors:** Senators Finkbeiner, Fairley, Esser, Reardon, Schmidt, Doumit, West, Rossi and T. Sheldon.

**Brief History:**

**Committee Activity:** Technology & Communications: 2/3/03, 2/6/03 [DP-WM].  
Ways & Means: 2/14/03, 2/27/03 [DP, DNP].

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### SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

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

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Eide, Poulsen, Reardon, Schmidt and Stevens.

**Staff:** Dario de la Rosa (786-7484)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Fairley, Hale, Honeyford, Johnson, Parlette, Sheahan and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Brown, Fraser, Poulsen, Regala and B. Sheldon.

**Staff:** Catherine Suter (786-7442)

**Background:** Thirty-seven cities impose business and occupation (B&O) taxes. City B&O taxes are imposed on the gross receipts of activities conducted by businesses located within that city. Currently, cities, code-cities and towns have the ability impose a B&O tax on activities related to the creation of intellectual property. Intellectual property includes the development and customization of computer software.

**Summary of Bill:** Cities, code-cities or towns may not impose a B&O tax on the activity of creating intellectual property, unless that city, code-city or town had such a tax prior to January 1, 2002. All cities, code-cities or towns that have imposed B&O taxes on the

creation of intellectual property are prohibited from imposing and collecting such taxes by January 1, 2004.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2003.

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

**Testimony For (Technology & Communications):** The bill represents a simple solution to a complex problem. A tax on intellectual property created uncertainty on the tax burden of smaller companies. The tax on the creation of intellectual property is arbitrary and discriminatory, and trying to place a tax on this type of activity is confusing. This type of tax stifles smaller companies' ability to do research and development. Because this type of tax creates an environment hostile to the high tech industry, companies may not want to establish businesses in Washington. High tech companies in Washington support a reliable, equitable form of taxation.

**Testimony Against (Technology & Communications):** Local taxing matters should be made at the local level. The city uses a specific formula for taxing. The definition of intellectual property is too broad, and other activities could fall under this exemption that were not intended to.

**Testified (Technology & Communications):** Senator Bill Finkbeiner, prime sponsor (pro); Lew McMurrin, WSA (pro); Nancy Atwood, AEA (pro); David Foster, City of Seattle (con).

**Testimony For (Ways & Means):** Software development is intangible and therefore should not be a taxable activity. It does not fit two definitions of reasonable taxation: ease of compliance and ease of administration. Taxing development does not make logical sense. Gross receipts are not related to the cost of research and development, and taxes should focus on activities, not groups of taxpayers. The software industry is not creating a loophole here, but good taxation. Local code says that there can be taxation before a sale.

**Testimony Against (Ways & Means):** The City of Seattle opposes this as currently written: it should apply to hi-tech and bio-tech work only, not all intellectual property. For clarification: if product development occurs in the city and then the mass production occurs elsewhere, 90 percent of the retail sale is taxed as the portion of manufacturing that happened in the city. The city does not tax the product development until there is a sale.

**Testified (Ways & Means):** CON: David Foster, City of Seattle. PRO: Lew McMurrin, Washington Software Alliance; Nancy Atwood and Chauncey MacLean, American Electronics Association.