HOUSE BILL REPORT
2SHB 2839

As Passed House:
March 4, 2016

Title: An act relating to providing a sales and use tax exemption for certain new building construction to be used by maintenance repair operators for airplane repair and maintenance.

Brief Description: Providing a sales and use tax exemption for certain new building construction to be used by maintenance repair operators for airplane repair and maintenance.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Springer and Nealey).

Brief History:

Committee Activity:

Finance: 1/29/16, 2/8/16 [DPS];

Appropriations: 2/22/16, 2/29/16 [DP2S(w/o sub FIN)].

Floor Activity:

Passed House: 3/4/16, 84-13.

Brief Summary of Second Substitute Bill

- Creates an exemption from sales and use tax, in the form of a remittance, for all charges for construction of a new building that will be owned or leased by an aircraft maintenance repair operator.
- Prohibits the Department of Revenue from refunding the state portion of sales and use tax unless certain employment metrics are met, and not earlier than December 1, 2021.
- Defines an eligible maintenance repair operator as one that is located in an airport owned by a county with a population of greater than 1.5 million.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lytton, Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Manweller, Pollet, Reykdal, Springer, Stokesbary, Vick and Wilcox.

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

Minority Report: Without recommendation. Signed by 4 members: Representatives Robinson, Vice Chair; Frame, Ryu and Wylie.

Staff: Sarah McLaughlin Emmans (786-7288).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Finance. Signed by 28 members: Representatives Dunshee, Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Lytton, MacEwen, Magendanz, Manweller, Pettigrew, Sawyer, Schmick, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Van Werven.

Minority Report: Do not pass. Signed by 5 members: Representatives Ormsby, Vice Chair; Kagi, Robinson, Senn and Walkinshaw.

Staff: Sarah Emmans (786-7288).

Background:

Aircraft Repair Station.
The National Air Transportation Association defines the term "repair station" as a maintenance facility that has a certificate issued by the Federal Aviation Administration (FAA) under Title 14 of the Code of Federal Regulations (14 CFR) Part 145 and is engaged in the maintenance, preventive maintenance, inspection, and alteration of aircraft and aircraft products. Maintenance facilities must apply to the FAA for a repair station certificate; at the end of the application process, the FAA may issue a certificate and a rating that describes the tasks that the repair station is capable of performing. According to the FAA, there are more than 100 repair stations in Washington state.

Sales and Use Tax.
Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services (including construction). A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Taxation of Construction Activities.
Prime contractors must collect retail sales tax from the purchaser of the construction project on the gross contract price (without deduction of costs incurred). Billing invoices must separately state the sales tax. If the contract requires retainage, sales tax must be computed before deducting such amounts. Retail construction services are sourced to the location where the construction takes place. A contractor is considered the consumer of items

purchased for use in the construction process and not used as component parts of the finished structure, and therefore, retail sales tax must be paid to the vendors of such items. The purchase of materials by custom contractors that will become part of the completed project are purchases for resale (wholesale). Such purchases are not subject to retail sales tax. Reseller permits allow businesses to purchase items or services for resale without paying retail sales tax. Use tax is due if sales tax has not been paid on items the contractor uses as a consumer. Use tax is generally due (if sales tax has not been paid) on the following: equipment, tools, supplies, and rentals of equipment, even if the cost for these items is passed along to the purchaser of the construction project.

Exemption for Machinery and Equipment.
A retail sales and use tax exemption applies to new or replacement machinery and equipment (M&E) used in a manufacturing, testing, or research and development operation by a manufacturer or processor for hire. The exemption also applies to services, such as installation or repair services, rendered with respect to the M&E. The exemption applies to industrial fixtures and devices as well as pollution control equipment that is used in the manufacturing operation. The exemption does not apply to short-lived tools, hand tools, and consumable supplies.

Tax Preference Performance Statement.
In 2013 the Legislature passed Engrossed Substitute Senate Bill 5882, which requires all new tax preference legislation to include a tax preference performance statement. New tax preference means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objective of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference.

Engrossed Second Substitute Bill 5882 also establishes an automatic 10-year expiration date for new tax preference if an alternative expiration date is not provided in the new tax preference legislation.

Summary of Second Substitute Bill:

Payment by an eligible maintenance repair operator for the construction of a new building is exempt from sales and use tax. The exemption also applies to any charges made for the installation in the building of any machinery and equipment that is not otherwise exempt from sales tax.

The exemption is in the form of a remittance. Remittance of local sales and use tax is immediate; remittance of the state sales and use tax would not occur until after the facility has been operationally complete for four years, but not earlier than December 1, 2021. The Department of Revenue may not refund the state sales and use tax unless the purchaser reports at least 100 average employment positions to the Employment Security Department for the period from September 1, 2020, to September 1, 2021, with average annualized wages of $80,000.

An eligible maintenance repair operator is a person classified by the FAA as a Part 145 certified repair station, and located in an airport owned by a county with a population of more than 1.5 million. The exemption also applies to construction of a new building paid for by a port district, political subdivision, or municipal corporation, if the building will be leased to an eligible maintenance repair operator.

Any person claiming the exemption is required to file an annual report with the Department of Revenue.

The tax preference is categorized as one intended to create jobs, and the tax preference performance statement requires the JLARC to evaluate, three years after a maintenance and repair station is operationally complete, whether or not a taxpayer claiming the exemption is on target to meet the employment levels specified in the bill by the fourth year of operation, and whether or not the annualized wages for the employees are on a par with industry standards for the sector.

The act expires on January 1, 2027.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 3, 2016.

Effective Date: The bill takes effect July 1, 2016.

Staff Summary of Public Testimony (Finance):

(In support) The Legislature must make judgments about tax exemptions on an individual basis. The particular exemption in question could result in a substantial number of high-paying jobs, but if the tax exemption does not get enacted, then the building will be located somewhere else – most likely in Oregon. The stakeholders are interested in and willing to build metrics into the bill. The fiscal note should be accurate based on cost in the near-term, but the future years are not accurate unless someone else enjoys the exemption as well. The industry has been trying to convince other original equipment managers to set up shop in aircraft repair and modification or product support in the State of Washington. These service centers will end up in the Pacific Northwest somewhere, but it has been challenging to get companies to recognize that Washington is an option. The tax structure comes up often when industry representatives visit shops and try to get them to come to Washington. With the incentives that are in the bill, then there would be letters of intent to operate here in Washington. The jobs produced would be between 75 and 135, and these are family-wage jobs with salaries between $85,000 and $120,000 a year.

(Opposed) None

Staff Summary of Public Testimony (Appropriations):

(In support) This is a good bill that would create jobs, and that contains very specific job targets and accountability measures. This segment of the industry is increasingly competitive, especially with other states. This bill gives industry stakeholders the chance to bring work that has been priced out of the market back into the region.

(Opposed) None.

Persons Testifying (Finance): Representative Springer, prime sponsor; Charles Kegley, Gateway USA; and Steve Gano, Clay Lacy.

Persons Testifying (Appropriations): Representative Springer, prime sponsor; and Steve Gano and Charles Kegley, Gateway USA.

Persons Signed In To Testify But Not Testifying (Finance): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.