

# HOUSE BILL REPORT

## HB 1764

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**As Reported by House Committee On:**  
Finance

**Title:** An act relating to establishing a method of valuing asphalt and aggregate used in public road construction for purposes of taxation.

**Brief Description:** Establishing a method of valuing asphalt and aggregate used in public road construction for purposes of taxation.

**Sponsors:** Representatives Wylie and Orcutt.

**Brief History:**

**Committee Activity:**

Finance: 2/21/23, 2/22/23 [DPS].

**Brief Summary of Substitute Bill**

- Establishes a valuation method for asphalt and aggregates manufactured or extracted by providers of public road construction and adds a public road construction market adjustment of 5 percent.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Chopp, Ramel, Santos, Springer, Stokesbary, Thai, Walen and Wylie.

**Staff:** Rachelle Harris (253-444-0316).

**Background:**

Retail Sales and Use Tax.

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*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.*

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. 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 tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities 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 4.0 percent, depending on the location.

When determining use tax on tangible personal property, the value of the article shall be determined based on the first act within the state by which the taxpayer takes or assumes dominion or control over the article. The value includes installation, storage, distribution, or any other act preparatory to subsequent use or consumption within the state.

Tangible personal property incorporated as an ingredient or component of public road construction used by the taxpayer is subject to use tax. The method to determine the value of these components is the value of external sales. There are five factors used to determine if the value of these components can be determined by the proceeds from other sales by the taxpayer:

1. sales at comparable locations;
2. products of like quality and character;
3. comparable conditions of sale;
4. comparable purchasers; and
5. similar quantities.

In the absence of sales of similar products as a guide to value, the value may be determined using a cost basis.

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### **Summary of Substitute Bill:**

For asphalt or aggregates manufactured or extracted by providers of public road construction, the value of the asphalt or aggregates is the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of 5 percent. The valuation method applies only to contracts executed on or after the effective date of the bill.

### **Substitute Bill Compared to Original Bill:**

The substitute bill clarifies that the valuation method is for asphalt and aggregates manufactured or extracted by providers of public road construction and changed the market adjustment rate from 7 percent to 5 percent. The substitute bill additionally clarifies that the valuation method applies only prospectively to tax liability for contracts executed on or after the effective date of the bill, and provides a new effective date of August 1, 2023.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on August 1, 2023.

**Staff Summary of Public Testimony:**

(In support) Public road construction is an important service to the state, and a continued stability in calculation of taxes for these contractors. Stakeholders have worked with the Department of Revenue (DOR) to come to a mutually agreeable approach to this issue. This will help ensure fair and predictable valuation of asphalt. The DOR's interpretation has changed and made it harder for contractors to have predictable costs. It is vitally important to have predictability of the costs for road construction since the market is driven by a low-bid process.

(Opposed) None.

(Other) The DOR is grateful to have had the ability to work with stakeholders, and believes this bill provides a balanced approach to the valuation issue. While the DOR believes that the 5 percent rate may be a little bit low, other stakeholders have data that says 7 percent is too high, therefore, the rate is ultimately a legislative choice.

**Persons Testifying:** (In support) Representative Sharon Wylie, prime sponsor; Lisa Thatcher, Miles Resources; Dave Gent, Washington Asphalt Pavement Association; and Dax Woolston, Lakeside Industries, Incorporation.

(Other) Ian Doyle, Department of Revenue.

**Persons Signed In To Testify But Not Testifying:** None.