

# SENATE BILL REPORT

## SHB 1764

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As of March 13, 2023

**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:** House Committee on Finance (originally sponsored by Representatives Wylie and Orcutt).

**Brief History:** Passed House: 3/7/23, 95-0.

**Committee Activity:** Ways & Means: 3/13/23.

### Brief Summary of 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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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Alia Kennedy (786-7405)

**Background:** Retail Sales and Use Tax. 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.

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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.*

When determining use tax on tangible personal property, the value of the article is 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 following five factors are used to determine if the value of these components can be determined by the proceeds from other sales by the taxpayer:

- sales at comparable locations;
- products of like quality and character;
- comparable conditions of sale;
- comparable purchasers; and
- similar quantities.

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

**Summary of 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 act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on August 1, 2023

**Staff Summary of Public Testimony:** PRO: The Department of Revenue (DOR) opposed this legislation last session, so stakeholders worked with them in the interim to find a mutually agreed upon approach to valuing asphalt and aggregates. The bill creates a fair and predictable way for valuing asphalt for use in public road construction. Changes in DOR's audit process made predicting the tax on these materials challenging and created higher audit costs for taxpayers. The bill does not change any tax obligation of the industry, but instead codifies an existing approach and simplifies the audit process. Uncertainty in tax administration requires contractors to increase their bids. The comparable sales method for valuation is impractical.

OTHER: DOR is neutral on this legislation. The market adjustment is intended to be a proxy for comparable sales. The bill is an improvement over last year's legislation and the product of extensive engagement between DOR and stakeholders.

**Persons Testifying:** PRO: Dave Gent, Washington Asphalt Pavement Association; Dax Woolston, Lakeside Industries, Inc.; Lisa Thatcher, Miles Resources.

OTHER: Steve Ewing, Department of Revenue.

**Persons Signed In To Testify But Not Testifying:** No one.