

SENATE BILL REPORT

SB 6136

As of January 17, 2024

Title: An act relating to a business and occupation tax on the privilege of providing property for rent and supporting access to affordable rental property by exempting from tax landlords participating in a rent stabilization program.

Brief Description: Reestablishing a business and occupation tax on the privilege of providing property for rent and supporting access to affordable rental property by exempting from tax landlords participating in a rent stabilization program.

Sponsors: Senators Kuderer, Frame, Hasegawa, Lovelett, Nobles, Saldaña and Wellman.

Brief History:

Committee Activity: Housing: 1/17/24.

Brief Summary of Bill

- Makes the privilege of providing property for rent subject to the business and occupation tax (B&O).
- Directs the Department of Commerce (Commerce) to develop and administer an optional residential rent stabilization program the requires landlords to limit increase in rent to no more than 5 percent each year.
- Creates a B&O tax deduction for landlords participating in the residential rent stabilization program.
- Requires Commerce to develop recommendations for a commercial rent stabilization program and submit a report of those recommendations to the Legislature by December 1, 2025.

SENATE COMMITTEE ON HOUSING

Staff: Samantha Doyle (786-7335)

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.

Background: Business and Occupation Tax. The state business and occupation (B&O) tax is Washington's primary business tax. It is a gross receipts tax measured on the value of products, gross proceeds of sale, or gross income of the business. There are no deductions from the B&O tax for labor, materials, taxes, or other costs of doing business. The B&O tax rate varies by classification or activity. The major rates are: 0.471 percent for retailing activities, 0.484 percent for manufacturing and wholesaling activities, and for service and other activities, either 1.5 percent or 1.75 percent, depending upon the amount of annual gross income of the business. The state B&O tax includes a number of preferential tax rates, credits, exemptions, and deductions as well as several increased rates or surcharges.

Taxing Rental Real Estate. In 1935, state law included a prohibition against taxing income from the rental of real estate. In 1959, the law was amended to subject the rental of real estate to B&O tax at a rate of 0.25 percent. The following year the Washington State Supreme Court determined this to be non-uniform taxation and ruled the tax to be unconstitutional in *Apartment Operators Association of Seattle v. Schumacher*. The Washington State Supreme Court later questioned the validity of *Schumacher*, but never specifically overturned the holding.

Home Security Fund. The Home Security Fund is used by the Department of Commerce (Commerce) to manage the state homeless housing programs, issue private rental housing payments, and provide housing and shelter support. The Eviction Prevention Rental Assistance Program is one of several housing programs administered by Commerce. Monies in the account consist of document recording surcharges and appropriations from the Legislature.

Rent Regulation. The Residential Landlord-Tenant Act and Manufactured/Mobile Home Landlord-Tenant Act establish rights and duties for both tenants and landlords, such as conditions for eviction and termination of the lease, notice requirements, and the handling of security deposits. These laws do not restrict the amount in which a landlord may increase rent.

Tax Preference Performance Requirements. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 700 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Summary of Bill: Business and Occupation Tax. Any person engaging in the business of providing property for rent is subject to B&O tax. The tax on residential rental property begins January 1, 2025. The tax on commercial rental property begins January 1, 2027.

The measure of tax is the gross proceeds from rent multiplied by a rate of either 1.5 or 1.75 percent for taxable activities of \$1 million or more in the prior year.

All revenue from the tax on providing property for rent must be deposited into the Home Security Fund to support the Eviction Prevention Rental Assistance Program.

Business and Occupation Tax Deduction. B&O tax deduction is available to landlords participating in a rent stabilization program administered by Commerce. The tax deduction for residential rental property begins January 1, 2025. The tax deduction for commercial rental property begins January 1, 2027.

The deduction is equal to the amount of rent collected by a landlord on rental property for which the landlord has certified that increases in rent do not exceed that allowable under a rent stabilization program administered by Commerce.

Any person claiming a deduction must provide documentation to the Department of Revenue (DOR) sufficient to verify certification by Commerce.

DOR must publish guidance to assist landlords in determining the amount of tax due. The guidance must include information about the rent stabilization certification program.

The tax deduction for residential rental property expires January 1, 2035. The tax deduction for commercial rental property expires January 1, 2037.

Residential Rent Stabilization Program. Commerce must develop and administer an optional residential rent stabilization program. The program must include a process to certify landlords who do not increase the amount charged for rent:

- during the first 12 months after the tenancy begins; and
- during any 12-month period, in an amount greater than 5 percent.

The rent increase limitations do not apply to a manufactured/mobile home community (MHC) during the first 12 months after the sale of a MHC to an eligible organization, as provided by the Manufactured/Mobile Home Landlord-Tenant Act, whose mission aligns with the long-term preservation and affordability of the MHC. Any rent and fee increase must be as needed to cover the cost of purchasing the MHC and be approved by vote or agreement with the majority of the homeowners in the MHC.

Commerce must make information about the rent stabilization program available on its website. The information must include information about the tax deduction for landlords participating in the program.

Commercial Rent Stabilization Program. Commerce, in consultation with the Office of the Attorney General, DOR, and relevant stakeholder groups, must develop recommendations

for a rent stabilization program for commercial rental property. The recommendations must be comparable to the rent restrictions and other relevant provisions of the residential rent stabilization program. Commerce must submit a report with the recommendations to the appropriate committees of the Legislature by December 1, 2025.

Tax Preference Performance Requirements. The act contains a tax preference performance statement that states it is the Legislature's specific public policy objective to create and maintain a stable and affordable rental housing market by providing a tax incentive to landlords that limit increases in rent.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill closes a preferential tax loophole. Excessive rent increases and homelessness is costly to everyone. Please consider making nonvoluntary. We also appreciate the definition of rent as including monthly fees. We applaud the introductory statement, however, are concerned about the voluntary nature of the bill as it may lead to landlords passing the tax onto tenants. Tenants would need the passage of SB 5961 to make sure this does not happen.

One of our members received a \$300 rent increase or 58 percent and could barely afford needs after rent. Please stand with renters and small business owners. Landlords should not be getting preferential tax treatment in this state. Tenants desperately need rent protection now. Please make this bill more aligned with SB 5961. As a small business owner, I must plan accordingly for taxes. I pay my taxes, why shouldn't landlords? Washington has a lot of people of color and specifically black and brown renters facing housing instability and disproportionally facing evictions. The status quo perpetuates racial disparities.

CON: Rent control does not work here or anywhere. If enacted, I would sell my properties and invest outside of Washington. As a small housing provider, this tax would make rent more expensive than it already is with so many maintenance expenses. My costs have increased as much as 30 percent each month. Landlords should not have this tax imposed because it keeps costs down for our tenants. Any savings for me is a savings for them. I am trying to provide affordable housing for my community. I am asking for more carrots and supports instead of caps and taxes. Rent control leads to urban decay wherever it exists.

This bill will affect small landlords the most. Most small rental units run on a small profit margin. This will result in fewer units. This arbitrary number does not cover the rising costs to provide housing. This bill creates a choice of two unappetizing choices. It will result in at

least 5 percent increases every year.

We oversee manufactured/mobile home communities, and we provide affordable housing but would not exempt. Washington is in a housing shortage, needing approximately 1 million units by 2040. This bill would disincentivize needed investment. This bill would tax me on services that I would have to provide, but not be able to recoup the costs for. I am currently moving my investments out of state to invest in a state that has fewer regulations. It is globally easier in other states due to ease of permitting and other regulations. I am already taxed at the federal level, please consider making the tax be on net. This bill would be unconstitutional based on unequal protections. This is a double tax and will result in increasing all costs in Washington.

OTHER: We appreciate the chair working with the ports to modify the definition of person to exclude commercial properties managed by the port and other municipalities. Largest costs for landlords is often property taxes. This is especially true when property improvements are made. Additionally, difficult if having to obtain a loan and interest rates are high right now. This bill would make upgrades incredibly difficult. It would put several people out of business.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Matthew Lang, Transit Riders Union; Ishbel Dickens, Assoc of Manufactured Home Owners; Terri Anderson, Tenants Union of Washington State; Edith Baltazar, Firelands Workers Action/Acción de Trabajadores; Kate Rubin, Be:Seattle; Michele Thomas, Washington Low Income Housing Alliance; Debbie Lacy, Eastside For All; Talauna Reed, Tenants Union of Washington State.

CON: Christina Nelson, TBPM; Constance Nelson; Jeannette Mcchesney; Doug Anderson; Geoffrey Arthur, Northwest Realty Associates, LLC; Bruce Becker; Ryan Erickson, Commonwealth Real Estate; William Shadbolt, Washington Business Properties Association; Patricia Hoendermis, Yakima Valley Landlords Assoc.; Ian Randall; Sheri Druckman, Legacy Partners; carl haglund, Columbia Modern Living; Tim Eyman, Initiative Activist; Alex Arwine; Jake Bond, GSC Investments; Christa Connolly, MHCW; Mike Simonitch, Shelter Properties; Debby Herbert; Beth Daranciang; Larry Seto.

OTHER: RUSS MILLARD, Signature Home Sales, LLC; John Flanagan, Port of Seattle.

Persons Signed In To Testify But Not Testifying: CON: carl haglund; RUSS MILLARD, LEISURE ESTATES LLC; Jennifer Lekisch.