



STATE OF WASHINGTON  
DEPARTMENT OF REVENUE

**SUMMARY OF 2009 TAX LEGISLATION**

**Washington Department of Revenue  
Legislation & Policy and Research Divisions  
May 2009**

This report summarizes major revenue and tax legislation in Washington that was approved during the regular session of the 2009 Legislature. The material was compiled from information developed by the Research Division and the Legislation & Policy Division to prepare fiscal notes on these bills. The summary is not intended to cover technical details or provide a legal interpretation of the bills. Instead, its primary purposes are to alert agency personnel of the changes, to assist in developing implementation programs, and to serve as a resource for historical tax research.

Unless otherwise stated in the bill summaries, the bills take effect July 26, 2009. For bills with a determinable state revenue impact, the estimated impacts are shown on a table following the Table of Contents.

CONTENTS

<u>Bill</u>	<u>Chapter</u>	<u>Subject</u>	<u>Page</u>
HOUSE BILLS			
SHB 1062	434	Electrolytic Processing Business Tax Exemption	1
E2SHB 1208	350	Property Tax Administration	1
SHB 1225	352	Special Fuel Tax Exemption for Public Transportation	2
HB 1287	503	Sales and Use Tax Exemptions for Commuter Aircraft	2
2SHB 1290	442	Local Tourism Promotion Areas	3
SHB 1435	154	Licensing of Cigarette and Tobacco Product Sellers	3
SHB 1475	93	State Agency Rule-Making Information	4
2SHB 1481	459	Electric Vehicles	4
2SHB 1484	354	Habitat Open Space	5
SHB 1555	432	Underground Economy in the Construction Industry	5
EHB 1568	162	Persons Selling, Soliciting or Negotiating Insurance	6
HB 1579	508	B&O Tax Exemption for Providing Legal Services	6
SHB 1733	255	Property Tax Current Use Valuation Programs	6
SHB 1751	511	Time Period for Collecting Sales and Use Tax	7
EHB 1815	513	Current Use Valuation Under Open Space Program	7
ESHB 1978	8	Economic Stimulus Transportation Funding & Approp.	8
ESHB 2075	535	Excise Tax for Products/Services Furnished Electronically	8
EHB 2122	461	Reducing B&O Tax Burden on Newspaper Industry	10

<u>Bill</u>	<u>Chapter</u>	<u>Subject</u>	<u>Page</u>
ESHB 2261	548	Concerning the State's Education System	10
EHB 2299	533	Public Facilities District	10

#### SENATE BILLS

2SSB 5045	270	Community Revitalization Financing	11
ESSB 5321	550	Financial Assistance for Certain Annexing Cities	11
SB 5355	306	Initial Levy Rates for Rural County Library Districts	12
SSB 5368	308	Value Real Property Annually for Property Tax Purposes	13
SSB 5401	246	Habitat for Open Space	13
SB 5426	115	Annexing to a Fire Protection District	14
2SSB 5433	551	Modifying Provisions of Local Option Taxes	14
SB 5470	483	Low-Income Senior Housing Facilities	15
SB 5511	127	City-County Assistance Account Distributions	16
SB 5540	280	High Capacity Transportation Service	17
SSB 5566	289	Harmonizing Streamlined Sales and Use Tax Agreement	17
SB 5568	309	Enhancing Tax Collection Tools/Subpoena Authority	18
SSB 5571	176	Requiring Use of Electronic Methods for Taxes	18
SSB 5616	296	Business Expansion, Recruitment and Training	19
SB 5680	58	Property Tax Exemption for Nonprofit Organizations	19
E2SSB 5688	521	Expanding Rights of State Registered Domestic Partners	20
ESSB 5901	267	Local Infrastructure Financing Tool Program Provisions	20
SB 5909	268	High Technology Retail Sales and Use Tax Deferral	21
SB 5976	261	Extending Tire Replacement Fees	22
SB 6096	494	B&O Taxation of the Manufacturing of Bunker Fuel	22
ESSB 6169	562	Enhancing Collection Tools/Improved Levy Authority	23
ESSB 6170	469	Environmental Tax Incentives	23
SB 6173	563	Improving Sales Tax Compliance	26

**STATE REVENUE IMPACT OF MAJOR 2009 TAX LEGISLATION - Sources Impacting Dept. of Revenue Only**

**State General Fund**

Bill Num	Bill Description	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
SHB 1062	Electrolytic process tax exemption	\$0	(\$313,000)	(\$313,000)	(\$750,000)	(\$750,000)	(\$1,500,000)
HB 1287	Intrastate commuter aircraft	(\$37,000)	(\$56,000)	(\$93,000)	(\$56,000)	(\$67,000)	(\$123,000)
2SHB 1481	Electric vehicles	(\$144,000)	(\$172,000)	(\$316,000)	(\$205,000)	(\$246,000)	(\$451,000)
2SHB 1484	Habitat open space	(\$1,000)	(\$2,000)	(\$3,000)	(\$2,000)	(\$2,000)	(\$4,000)
HB 1579	Nonprofit legal services	(\$24,000)	(\$31,000)	(\$55,000)	(\$34,000)	(\$37,000)	(\$71,000)
SHB 1733	Current use valuation progs	(\$9,000)	(\$18,000)	(\$27,000)	(\$18,000)	(\$19,000)	(\$37,000)
ESHB 2075	Excise taxation	(\$1,253,000)	(\$1,382,000)	(\$2,635,000)	(\$1,403,000)	(\$1,474,000)	(\$2,877,000)
EHB 2122	Newspaper industry B & O tax	(\$1,200,000)	(\$1,300,000)	(\$2,500,000)	(\$1,300,000)	(\$1,300,000)	(\$2,600,000)
2SSB 5045	Community revitalization	\$0	(\$2,250,000)	(\$2,250,000)	(\$4,750,000)	(\$4,750,000)	(\$9,500,000)
ESSB 5321	Local & state sales & use tax	\$0	\$0	\$0	(\$12,035,000)	(\$14,657,000)	(\$26,692,000)
SB 5470	Low-income senior housing	(\$65,000)	(\$84,000)	(\$149,000)	(\$88,000)	(\$92,000)	(\$180,000)
SSB 5571	Electr methods/revenue dept	\$43,000	\$198,000	\$241,000	\$322,000	\$365,000	\$687,000
SSB 5616	Business customized training	\$84,000	\$5,000	\$89,000	(\$89,000)	\$0	(\$89,000)
ESSB 6169	Tax collection tools	\$4,187,000	\$4,568,000	\$8,755,000	\$4,568,000	\$4,568,000	\$9,136,000
ESSB 6170	Environmental tax incentives	\$4,288,000	(\$8,265,000)	(\$3,977,000)	(\$19,796,000)	(\$20,389,000)	(\$40,185,000)
SB 6173	Sales tax compliance	\$28,865,000	\$73,686,000	\$102,551,000	\$78,107,000	\$82,793,000	\$160,900,000

**State Funds other than General Fund**

Bill Num	Bill Description (Fund)	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
HB 1287	Intrastate commuter aircraft (Performance Audit)	(\$1,000)	(\$1,000)	(\$2,000)	(\$1,000)	(\$2,000)	(\$3,000)
ESHB 2075	Excise taxation (Performance Audit)	(\$8,000)	\$4,000	(\$4,000)	\$9,000	\$12,000	\$21,000
SSB 5368	Annual property valuation (Annual Prop. Reval. Grant)	\$0	\$1,184,000	\$1,184,000	\$1,197,000	\$1,197,000	\$2,394,000
SB 5976	Tire replacement fees (Motor Vehicle)	\$922,000	\$0	\$922,000	\$5,267,000	\$0	\$5,267,000
SB 5976	Tire replacement fees (Waste Tire Removal)	(\$922,000)	\$3,366,000	\$2,444,000	(\$1,422,000)	\$4,025,000	\$2,603,000
ESSB 6170	Environmental tax incentives (Performance Audit)	(\$13,000)	(\$35,000)	(\$48,000)	(\$28,000)	(\$28,000)	(\$56,000)
SB 6173	Sales tax compliance (Performance Audit)	\$46,000	\$118,000	\$164,000	\$125,000	\$133,000	\$258,000

## HOUSE BILLS

### **SHB 1062 Relating to the expiration date, goals, and legislative reporting provisions of the electrolytic processing business tax exemption (Chapter 434, Laws of 2009)**

This bill extends a public utility tax (PUT) exemption for the sale of electricity used in the chemical industry that supplies bleaching materials to the pulp and paper industry.

Under current law, income received by a utility from the sale of electricity to a chlor-alkali or sodium chlorate electrolytic processing business (chemical business) is exempt from the 3.873 percent PUT if the contract for the sale of electricity between the chemical business and the utility meets certain requirements. These chemical businesses use significant amounts of electricity in their chemical processing operations. The exemption was scheduled to expire for sales of electricity made after December 31, 2010.

This bill extends the expiration date for the electrolytic processing PUT exemption from December 31, 2010, to December 31, 2018.

The bill also directs the Citizen Commission for Performance Measurement of Tax Preferences to schedule a tax preference review of the electrolytic processing PUT exemption by the Joint Legislative Audit and Review Committee.

### **E2SHB 1208 Relating to property tax administration (Chapter 350, Laws of 2009)**

This bill, requested by the county treasurers, primarily makes technical changes to property tax statutes.

Specifically, this bill:

- Updates several statutes to conform to 2007 legislation authorizing county treasurers to begin accepting property tax payments once the treasurer has completed the tax rolls.
- Makes payment dates for diking, drainage, and sewerage improvement district assessments the same as for property taxes. The interest rate charged on delinquent assessment payments is increased from 10 to 12 percent per annum.
- Requires the county treasurer affix a “verification of payment,” rather than the “stamp” currently required, to certain official documents to verify any applicable real estate excise taxes (REET) have been paid.
- Requires that property taxes be current in order to complete the processing of the REET affidavit or other documents transferring title when there is a sale of a used mobile home, used manufactured home, used park model, or used floating home that has not had its title eliminated. Verification that the property taxes are current must be noted on the mobile home REET affidavit or on a form approved by the county treasurer.

- Eliminates the discretionary power of the county legislative authority to authorize property tax refunds beyond the statutory three year time limit.
- Allows applications for the open space and timber land current use classifications for property located in cities to be approved by separate affirmative acts of the county legislative authority and city legislative authority. Where such applications are acted upon at a joint meeting of the county and city legislative authorities, the bill allows members to participate telephonically.
- Authorizes taxing districts, except the state, to impose a levy to recoup taxes that have been abated on destroyed property. This levy applies in cases where the taxes have not been refunded because the abatement occurred before the taxes were paid.
- Clarifies that taxing districts, except the state, are authorized to impose a refund levy to recoup taxes refunded or to be refunded under RCW 84.69.020 as ordered by the county treasurer or county legislative authority within the preceding 12 months, except for refunds of taxes paid more than once.

The provisions relating to refund levies and levies to recoup taxes abated on destroyed property were included in 2009 Department of Revenue request legislation (HB 2231 / SB 6047) and were added to this bill at the request of the Department. These provisions apply retroactively to July 1, 2009, and apply beginning with taxes levied in 2009 for collection in 2010.

**SHB 1225      Relating to the effect of special fuel taxes on publicly-owned or operated urban passenger transportation systems  
(Chapter 352, Laws of 2009)**

This bill provides that all publicly-owned and operated urban passenger transportation systems are exempt from the special fuel tax. A publicly-owned and operated urban passenger transportation system is defined to include public transportation benefit areas, metropolitan municipal corporations, city-owned transit systems, county public transportation authorities, unincorporated transportation benefit areas, and regional transportation authorities.

Under current law, this special fuel tax exemption only applies to publicly- or privately-owned urban passenger transportation systems if: (a) bus fares are its principal source of revenue, (b) it transports passengers in vehicles with a seating capacity of more than 15 people; and (c) its routes do not extend more than 25 road miles beyond the corporate limits of the county in which the trip originated. The bill maintains these requirements for privately-owned urban passenger transportation systems.

**HB 1287      Relating to sales and use tax exemptions in respect to aircraft used in intrastate commuter operations  
(Chapter 503, Laws of 2009)**

This bill provides a sales and use tax exemption for:

- Airplanes used in providing intrastate air transportation by a commuter air carrier (commuter airplanes);

- Tangible personal property that becomes a component part of commuter airplanes in the course of constructing, repairing, cleaning, altering, or improving such aircraft; and
- Labor and services rendered in respect to constructing, repairing, cleaning, altering, or improving commuter airplanes.

A commuter air carrier is defined as an air carrier that is licensed under federal regulations and carries passengers on at least five round trips per week.

**2SHB 1290 Relating to local tourism promotion areas  
(Chapter 442, Laws of 2009)**

This bill allows King County and cities within King County to form joint authorities for the purpose of creating tourism promotion areas and raising funds to promote tourism.

Under current law a county with a population greater than 40,000 but less than 1,000,000 and cities within those counties may create tourism promotion areas with the intention of increasing tourism and conventions. The legislative authority may impose a charge up to \$2 per day for each day that a lodging unit is occupied in facilities with 40 or more units. The Department of Revenue collects the charge for the local authority. The legislative authority imposing the charge determines how the revenue is to be used to promote tourism.

This bill allows counties with a population greater than 1,000,000 and the cities within those counties to participate in the tourism promotion program with the condition that two or more jurisdictions act jointly. The legislative authority must operate under an inter-local agreement. This joint legislative authority may create tourism promotion areas and impose daily lodging charges to be used to promote tourism. The legislative authority must contract with the Department of Revenue to collect the charges, and the Department may deduct a percentage amount for administrative expenses.

**SHB 1435 Relating to licensing administration for cigarettes and tobacco products  
(Chapter 154, Laws of 2009)**

This bill transfers the administration of cigarette and other tobacco products licensing from the Department of Revenue (DOR) to the Liquor Control Board (LCB) and takes effect July 26, 2009.

Both wholesalers/distributors and retailers of cigarettes and other tobacco products are required to have special licenses. These licenses are issued by the Department of Licensing (DOL) through its Master License Service. Persons applying for licenses to sell cigarettes and tobacco products are subject to criminal background checks.

This bill gives the LCB authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. A criminal background check is required for

these licenses. The LCB may consider any prior criminal conduct of the applicant, including an administrative violation history record with the LCB.

DOR will continue to be responsible for the sale of cigarette tax stamps and for the collection of the “other tobacco products” tax.

**SHB 1475 Relating to state agency rule-making information  
(Chapter 93, Laws of 2009)**

This bill requires state agencies to maintain a website containing the agency's rule-making information, including the complete text of proposed rules, emergency rules, and permanent rules proposed or adopted within the past 12 months. A direct link to the rule-making page must be displayed on the agency's homepage. An agency's rule-making website may contain a direct link to the index page on the Washington State Register website that includes the agency's rulemaking activity. An agency's rule-making website must include the time, date, and place for the required hearing of a proposed rule and procedures and timelines for submitting written comments and supporting data.

**2SHB 1481 Relating to electric vehicles  
(Chapter 459, Laws of 2009)**

This bill encourages the transition to electric vehicle use and the establishment of electric vehicle infrastructure by, among other things, providing the following tax incentives:

- A leasehold excise tax exemption for leasehold interests in public lands for the purpose of installing, maintaining, and operating electric vehicle infrastructure.
- Sales and use tax exemptions for:
  - Batteries for electric vehicles;
  - Labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries;
  - Labor and services rendered in respect to installing, constructing, repairing, or improving electric vehicle infrastructure; and
  - Tangible personal property that will become a component of electric vehicle infrastructure during the course of installing, constructing, repairing, or improving electric vehicle infrastructure.

These tax exemptions expire January 1, 2020. For purposes of these exemptions, “electric vehicle infrastructure” means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

**2SHB 1484 Relating to habitat open space  
(Chapter 354, Laws of 2009)**

This bill amends the Riparian Open Space Program to allow the purchase of conservation easements on private forest lands that: (1) are within an unconfined channel migration zone; or (2) contain critical habitat for threatened or endangered species as designated by the Washington Forest Practices Board.

Under current law, chapter 84.34 RCW allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use. When property is removed from “current use” classification, tax (referred to as “additional tax”), penalties, and interest may apply. Similarly, under chapter 84.33 RCW, land that is 20 acres or more, which is used to grow and harvest timber, may be designated as forest land. Designated forest land qualifies for valuation based on its use for growing timber rather than its highest and best use. When property is removed from designated forest land status, tax (referred to as “compensating tax”), penalties, and interest may apply.

This bill makes conforming amendments to the current law which provides an exemption from compensating taxes and additional taxes. The exemption applies when private forest lands are removed from designated forest land status or current use timber classification as a result of the transfer of a conservation easement under the Riparian Open Space Program.

The bill also modifies the existing exemption from compensating taxes provided in RCW 84.33.145 when land, which has been transferred from designated forest land status to a current use classification under chapter 84.34 RCW, is removed from classification under chapter 84.34 RCW for certain reasons, if the land is located in a county with a population exceeding 1,000,000 inhabitants. The bill expands this exemption to land in counties with a population exceeding 600,000 inhabitants.

The Governor vetoed section 1 of this bill containing language that is identical to section 1 of SSB 5401. Section 1 concerned the use of the riparian open space program to protect critical habitat for threatened or endangered species.

**SHB 1555 Relating to the recommendations of the Joint Legislative Task Force on the  
Underground Economy in the Construction Industry  
(Chapter 432 Laws of 2009)**

This bill addresses contractor registration, workers' compensation education and outreach, liens on public works retainage, and unemployment record-keeping. The bill also requires the Department of Revenue (DOR), as well as the Department of labor and industries (L&I), and the Employment Security Department (ESD) to coordinate and report to the appropriate committees of the Legislature by December 1st of each year on the effectiveness of efforts implemented since July 1, 2008, to address the underground economy. Lastly, the bill extends the Joint Legislative Task Force on the Underground Economy in the Construction Industry to December



15, 2009, and the scope of the Task Force is extended beyond the construction industry. DOR will continue to provide a liaison representative to the Task Force.

Of particular interest to DOR is the portion of the bill dealing with liens on public works retainage. Public works retainage refers to an amount, up to five percent of the contract, reserved by the public body administering the public improvement contract from moneys owed to the prime contractor to ensure payment of taxes and other claims. Current law provides DOR with a lien against public works retainage for taxes due on public improvement projects, where the contract is for at least \$20,000. This lien is superior to all other liens, except for liens of employees of the contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract.

This bill provides L&I and ESD with a lien against public works retainage, which is junior to the DOR lien. There are multiple effective dates for provisions of this bill; however, the majority of the bill takes effect July 26, 2009.

**EHB 1568      Relating to persons selling, soliciting, or negotiating insurance  
(Chapter 162, Laws of 2009)**

Requested by the Office of the Insurance Commissioner, this bill makes a number of changes to insurance statutes. One change amends the definition of the term “insurance producer” to exclude surplus line brokers. The bill also makes a conforming change to the statute imposing business and occupation tax on insurance producers to include a separate reference to surplus line brokers since they are no longer considered an insurance producer.

**HB 1579      Relating to a business and occupation tax exemption for nonprofit  
organizations that provide legal services to low-income individuals  
(Chapter 508, Laws of 2009)**

This bill provides a business and occupation (B&O) tax exemption for nonprofit organizations that primarily provide legal services to low-income individuals from whom no charge for services is collected. For purposes of this exemption, a “nonprofit” means an organization exempt from federal income tax under Title 26 U.S.C. § 501(c) of the federal internal revenue code.

**SHB 1733      Relating to the property tax current use valuation programs  
(Chapter 255, Laws of 2009)**

This bill amends the farm and agricultural current use classification to include land used for equestrian activities such as stabling, training, riding, clinics, schooling, shows, and grazing for feed. The bill also exempts property owners from paying the back taxes, penalties, and interest when their property is removed from the current use or designated forest land programs, and the reason for the removal is the discovery that the land was improperly approved for the program

through no fault of the property owner. For a brief description of the current use and designated forest land programs, please refer to the summary of 2SHB 1484 in this report.

**SHB 1751 Relating to the time period during which sales and use tax for public facilities in rural counties may be collected (Chapter 511, Laws of 2009)**

This bill allows counties that impose the rural county sales and use tax at the rate of 0.09 percent before August 1, 2009, to continue imposing the tax for 25 years from the date the county first imposed the tax at the 0.09 percent tax rate.

The rural county sales and use tax is authorized in RCW 82.14.370. Counties eligible to impose the tax are those with an average population density of less than 100 residents per square mile or counties that are smaller than 225 square miles. Currently, 32 counties are eligible to impose the tax. The tax receipts may only be used for financing public facilities serving economic development purposes and personnel in economic development offices. This local tax is credited against the state sales and use tax, and, therefore, the effect of the tax is not felt by consumers. When the tax was first authorized, the maximum tax rate was 0.04 percent, which could commence no sooner than July 1, 1998, and would expire 25 years after it was first imposed. In 1999, the maximum tax rate was increased to 0.08 percent. Effective August 1, 2007, the maximum tax rate was increased from 0.08 percent to 0.09 percent.

**EHB 1815 Relating to current use valuation under the property tax open space program (Chapter 513, Laws of 2009)**

This bill allows land that is at least five acres but less than 20 acres to qualify for the current use program as farm and agricultural land if:

- The land has a standing crop consisting of short rotation hardwoods, or of Christmas trees, vineyards, fruit trees, or other perennial crop planted using agricultural methods and that typically do not produce harvestable quantities in the initial years after planting;
- The standing crop is expected to be harvested within seven years or, in the case of short rotation hardwoods, fifteen years; and
- The applicant establishes a demonstrable investment in the production of the standing crop equivalent to at least \$100 per acre in the current or previous calendar year.

The bill also requires county assessors to provide information regarding the process to appeal the county assessor's decision to remove property from the current use program. A removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization. For a brief description of the current use program, please refer to the summary of 2SHB 1484 in this report.

**ESHB 1978 Relating to economic stimulus transportation funding and appropriations  
(Chapter 8, Laws of 2009)**

This bill amends the 2007-2009 biennial transportation budget. A provision of the bill requires the Department of Revenue to participate with the Department of Licensing in analyzing and planning for the potential transfer of fuel tax administration from the Department of Licensing to the Department of Revenue. The agencies are required to report their findings and recommendations to the Governor and the transportation and fiscal committees of the Legislature by November 1, 2009. The report must include draft legislation that transfers administration to the Department of Revenue on July 1, 2010. The bill takes effect March 5, 2009.

Following enactment of this bill, the Legislature enacted the 2009-2011 biennial transportation budget, ESSB 5352 (chapter 470, Laws of 2009), which contained a nearly identical budget proviso requiring the Departments of Revenue and Licensing to analyze the potential transfer of fuel tax administration. This report does not include a separate summary for ESSB 5352.

**ESHB 2075 Relating to the excise taxation of certain products and services provided or furnished electronically  
(Chapter 535, Laws of 2009)**

This bill addresses the sales and use taxation of products and services furnished electronically.

Under current law, sales and use taxes apply to the sale and use of tangible personal property, including prewritten computer software, extended warranties, and certain enumerated services. The sales and use taxation of products furnished electronically (commonly referred to as “digital goods” or “digital products”), other than prewritten computer software, is not explicitly addressed in the statutes that impose sales and use taxes. The Department of Revenue (Department) takes the position that the sale or use of digital goods, where possession is transferred to the consumer, such as downloaded music, is subject to sales and use taxes under current law as tangible personal property. However, Washington would eventually become noncompliant with the Streamlined Sales and Use Tax Agreement by continuing to interpret its definition of tangible personal property to include digital goods.

This bill imposes sales and use taxes on the following:

- Digital goods, such as digital audio works, digital audio-visual works, digital books, and other products transferred electronically;
- The installing, repairing, altering, or improving of digital goods;
- Digital automated services (services transferred electronically that use one or more software applications);
- Digital codes used to obtain digital goods or digital automated services; and
- Remote-access software (that is, the service of furnishing access and use of prewritten computer software, where possession of the software is maintained by the seller or a third party).

The taxes imposed in this bill on digital products (that is, digital goods, digital codes, and digital automated services) apply regardless of the user rights granted by the seller, the method of obtaining the digital products, or whether the buyer is obligated to make continued payments as a condition of the sale.

The bill provides a number of exemptions from the sales and use tax on digital products. The primary exemptions are:

- The sale or use of digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to others (in other words, sales for resale);
- The sale or use of digital products incorporated as an ingredient or component of a new product;
- The sale or use of digital products or remote access software that will be made available free of charge for the use or enjoyment of others;
- The sale or use of audio or video programming furnished by a radio or television broadcaster. This exemption does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service, unless the seller is subject to a franchise fee in this state under the authority of 47 U.S.C. § 542(a) on the gross revenue derived from the sale;
- The sale or use by a business of standard digital information used solely for business purposes;
- The use of digital products provided free of charge to the end user; and
- The use of digital goods that are: (1) of a noncommercial nature, such as personal e-mail communications; (2) created solely for an internal audience; or (3) created solely for the business needs of the person who created the digital good and are not the type of digital good that is offered for sale, including business e-mail communications.

Other significant provisions of the bill include:

- Allows the apportioning of use taxes on digital products, prewritten computer software, and remote-access software, when these products and services are concurrently available for use by a business or other organization within and outside of this state. The amount of use tax apportioned to this state is based on users in this state compared to users everywhere. The Department may authorize or require an alternative method of apportionment.
- Provides that ownership of, or rights in, digital goods or digital codes residing on computer servers located in Washington does not establish substantial nexus for purposes of subjecting the owner to Washington State's taxing authority.
- Provides amnesty to taxpayers who did not collect or pay retail sales tax on digital goods before the effective date of the bill.

For purposes of business and occupation tax, retail and wholesale sales of digital products and remote-access software will be taxed at the same rate as the general wholesaling and retailing rates (currently 0.471 percent for retail sales and 0.484 percent for wholesale sales).

**EHB 2122 Relating to reducing the business and occupation tax burden on the newspaper industry  
(Chapter 461, Laws of 2009)**

This bill reduces the business and occupation (B&O) tax rate on printing or publishing newspapers from 0.484 percent to 0.2904 percent. This bill also requires businesses claiming this preferential tax rate to complete and electronically file an annual report with the Department of Revenue (Department) detailing employment, wage, and benefit information for employment positions in this state. By November 1, 2014, and November 1, 2016, the fiscal committees of the House of Representatives and the Senate, in consultation with the Department, must report to the Legislature on the effectiveness of the preferential B&O tax rate for the newspaper industry.

**ESHB 2261 Concerning the state's education system  
(Chapter 548, Laws of 2009)**

This bill adopts definitions, requirements, and financing formulas for a Program of Basic Education.

Section 302 of the bill provides that beginning July 1, 2010, the Office of Financial Management, with assistance and support from the Office of the Superintendent of Public Instruction, is to form a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance. The Department of Revenue will be a member of the technical working group. The technical working group is required to report to the Legislature by December 1, 2011, and recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

**EHB 2299 Relating to the formation, operation, and nonstate funding of public facilities districts  
(Chapter 533, Laws of 2009)**

This bill allows the creation of a public facilities district (PFD) by at least two jurisdictions, one of which must be a city or town that has already created a PFD within the geographic boundaries of the newly formed PFD. PFDs authorized by this bill may be comprised of a maximum of three contiguous cities and two contiguous counties. PFDs authorized by this bill may acquire, construct, own, remodel, maintain, equip, re-equip, repair, finance, and operate one or more recreational facilities other than a ski area.

Under RCW 82.14.048, PFDs may impose a voter-approved sales and use tax at a maximum rate of 0.2 percent. Like all other local sales and use taxes, these PFD taxes are collected by the Department of Revenue (Department). The PFDs authorized by this bill may impose the sales and use tax authorized under RCW 82.14.048. However, the rate of tax may not exceed two-tenths of one percent minus the rate of the highest tax authorized under RCW 82.14.048 that is imposed by any other PFD within its boundaries. PFDs authorized by this bill and imposing the

local sales and use tax authorized under RCW 82.14.048 are responsible for the payment of any costs associated with the imposition of the tax, including costs incurred by the Department.

**2SSB 5045 Relating to community revitalization financing  
(Chapter 270, Laws of 2009)**

This bill authorizes cities and counties to create “revitalization areas” and allows certain increases in local sales and use tax revenues and local property tax revenues generated from within the revitalization area, additional funds from other local public sources, and a state contribution to be used for payment of bonds issued for financing local public improvements within the revitalization area. The state contribution is provided through a new local sales and use tax that is credited against the state sales and use tax.

The Department of Revenue (Department) is responsible for the administration of the program. To seek a state contribution, the local government that created a revitalization area must apply to the Department. The bill establishes seven demonstration projects that would automatically be approved by the Department in 2009 and also allows for a round of applications to be approved on a first-come basis.

The maximum amount of the state contribution is \$4.75 million per fiscal year. Of this amount, \$2.25 million is allocated for the seven demonstration projects, and \$2.5 million is allocated for the other projects approved by the Department. The maximum amount of state contribution for each demonstration project is specified in the bill and ranges from \$200,000 to \$500,000 per project. The maximum state contribution for each of the other approved projects is \$500,000 per project.

**ESSB 5321 Relating to extending a local sales and use tax that is credited against the state sales and use tax  
(Chapter 550, Laws of 2009)**

This bill provides financial assistance to certain cities to help fund the cost of services provided to newly annexed areas. The financial assistance is provided by expanding an existing local sales and use tax that is credited against the state sales and use tax.

RCW 82.14.415 authorizes certain cities, located in a county with population greater than 600,000, that are annexing areas before January 1, 2010, to impose a local sales and use tax (sometimes referred to as the “annexation tax”) that is credited against the state sales and use tax. The law currently excludes cities with a population of 400,000 or more from this taxing authority. The tax rate is 0.1 percent for each annexation area with a population between 10,000 and 20,000 and 0.2 percent for an annexation area with a population over 20,000. The maximum cumulative tax rate a city can impose is 0.2 percent. All revenue from the tax must be used to provide, maintain, and operate municipal services for the annexation area. The tax revenues may not exceed the difference between the amount the city deems necessary to provide services for the annexation area and the general revenue the city would otherwise expect to receive from the

annexation. If the annexation tax revenue and other revenue from the annexed area exceed the amount needed to provide services for the annexation area in any fiscal year, the tax must be suspended for the remainder of the fiscal year.

This bill makes a number of changes to the annexation tax, including:

- Extending the annexation tax for cities annexing qualifying areas by January 1, 2015.
- Authorizing cities with a population of 400,000 or more in a county with population greater than 600,000 to impose the annexation tax.
- Establishing a maximum annexation tax rate of 0.85 percent for an annexed area in which the population is greater than 18,000, if the annexed area was, before November 1, 2008, officially designated as a potential annexation area by more than one city, one of which has a population greater than 400,000. However, a city imposing the annexation tax at a rate of 0.85 percent is also limited to receiving no more than \$5 million of annexation tax per fiscal year. A city imposing the annexation tax at the 0.85 percent rate may only impose the tax at this rate for one annexation area.
- Increasing the maximum cumulative annexation tax rate from 0.2 percent to 0.3 percent, beginning July 1, 2011, if the city commenced annexation of an area before January 1, 2010, that would have otherwise allowed the city to increase the rate of annexation tax absent the 0.2 percent cumulative rate limit. This cumulative maximum tax rate applies to the tax imposed at the 0.1 or 0.2 percent rate.
- Allowing cities to qualify for the annexation tax if the city has a population between 115,000 and 140,000, is located within a county with a population over 1.5 million, and annexes an area with a population over 4,000.

**SB 5355      Relating to initial levy rates for rural county library districts  
(Chapter 306, Laws of 2009)**

This bill allows the petition and ballot proposition to establish a rural county library district to include an initial maximum property tax levy rate, not to exceed the statutory maximum rate of 50 cents per \$1,000 of assessed value. In subsequent years the levy rate may be increased as authorized under chapter 84.55 RCW.

A rural county library district is a library serving all the unincorporated area of a county. A rural county library district may also include any city or town with a population of 100,000 or less at the time of annexation into the rural county library district. Establishment of a rural county library district requires a petition signed by at least 10 percent of voters in the unincorporated area and voter approval. The maximum property tax levy rate of rural county library districts is 50 cents per \$1,000 of assessed value.

**SSB 5368      Relating to making provisions for all counties to value property annually for property tax purposes  
(Chapter 308, Laws of 2009)**

This bill requires all counties to revalue real property, for property tax purposes, on an annual basis by January 1, 2014. The bill also requires the Department of Revenue (Department) conduct advisory appraisals of industrial properties that are valued at \$25 million or more, when requested by the county assessor.

Under current law, county assessors must revalue property at least once every four years. Twenty counties in this state revalue all property annually, 17 counties revalue on a four-year cycle, one county revalues on a three-year cycle, and one county revalues on a two-year cycle.

The bill requires the Department to conduct a pilot project with at least one county that is prepared to move from cyclical to annual revaluation by December 31, 2009, but needs the Department's expertise to accomplish the conversion. The Department may contract with a local government association representing county assessors and other county elected officials in carrying out the pilot project.

Currently, a \$5.00 fee is collected on each real estate transaction to be used for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax (REET) affidavits. This fee is set to expire July 1, 2010. The bill makes this \$5.00 fee permanent. From July 1, 2010, through December 31, 2013, the fee revenues are placed in an annual property revaluation account to be used for a grant program administered by the Department to assist counties in converting to annual revaluations and for replacing computer systems used for revaluations. Grants are limited to \$500,000 per county. Beginning in 2014, the \$5.00 fee will go to the counties for maintenance and operation of an annual property tax revaluation system and an electronic processing and reporting system for REET affidavits. One-half of the fee revenue is retained by the county and one-half is forwarded to the state treasurer. The state treasurer will distribute those funds back to the counties, with one-half to be divided equally among the counties and one-half to be divided ratably in proportion to the population of each county.

**SSB 5401      Relating to habitat open space  
(Chapter 246, Laws of 2009)**

This bill is similar to 2SHB 1484, which is summarized above. Section 1 of this bill contains language that is identical to section 1 of 2SHB 1484. It concerns the use of the Riparian Open Space Program to protect critical habitat for threatened or endangered species. The Governor vetoed section 1 of 2SHB 1484 because of this duplication of language.

The only tax-related difference between the bills is that 2SHB 1484 amends RCW 84.34.145 to modify the existing exemption from compensating taxes when land, which has been transferred from designated forest land status to a current use classification under chapter 84.34 RCW, is removed from classification for certain reasons, if the land is located in a county with a



population exceeding 1,000,000 inhabitants. 2SHB 1484 expands this exemption to land in counties with a population exceeding 600,000 inhabitants. SSB 5401 does not contain this amendment.

**SB 5426      Relating to authorizing certain areas in cities or towns with a population greater than five thousand but less than ten thousand to annex to a fire protection district  
(Chapter 115, Laws of 2009)**

This bill allows a city or town located in two counties to annex a portion of the city or town to a fire protection district provided:

- Eighty percent of the population of the city or town resides within one county;
- The area to be annexed encompasses all of the area within the single county in which 80 percent of the population of the city or town resides;
- The population of the area to be annexed is greater than 5,000 and less than 10,000; and
- The proposed annexation area lies adjacent to a fire protection district at the time the annexation is initiated.

The property tax levy of a fire protection district that has annexed a portion of a city or town as authorized in this bill applies throughout the district, including the portion of the city or town annexed to the district.

**2SSB 5433      Relating to modifying provisions of local option taxes  
(Chapter 551, Laws of 2009)**

This bill provides flexibility in the use of current local revenue sources and provides additional optional funds for transportation purposes.

Current law authorizes counties, subject to voter approval, to impose a local sales and use tax of up to 0.3 percent for public safety. The county retains 60 percent of the tax receipts and the remaining 40 percent are distributed to cities on a per capita basis. A county may also impose a sales and use tax of 0.1 percent with the proceeds devoted to chemical dependency or mental health treatment programs and services and for the operation of therapeutic court programs and services. Revenues from these local sales and use taxes may not be used to supplant existing funds for these programs. However, this bill allows revenues from these local sales and use taxes to supplant existing funds, but this authority is phased out over five years. The bill also requires one-third of public safety sales and use tax revenues be used solely for criminal justice programs, fire protection services, or both. This requirement currently only applies to criminal justice programs.

Under current law, regular property tax levies are generally limited to annual increases of no more than one percent. Regular property taxes in excess of the one percent limit may be levied by a taxing district if approved by the voters for a period of up to six years. Such levies are sometimes referred to as lid lifts. The title of a ballot measure for a lid lift must state the limited

purposes for which the proposed annual increases during the specified period of up to six years will be used, and funds raised under the levy may not supplant existing funds used for these purposes. “Existing funds” means the actual operating expenditures for the calendar year in which the lid lift ballot measure is approved by voters.

This bill allows property tax levy lid lift funds to be used to supplant existing funds, beginning with levies approved by the voters in 2009 and after the effective date of the bill. However, in counties with a population of at least 1,500,000 (King County), the elimination of the nonsupplant provisions only applies to levies approved by the voters in 2009 through 2011.

This bill also reduces the maximum property tax levy rate for ferry districts in a county with a population of at least 1,500,000 (King County) from 75 cents per \$1,000 of assessed value to 7.5 cents per \$1,000 of assessed value. (King County’s ferry district levy rate for taxes due in 2009 was 5 cents per \$1,000 of assessed value.) In addition, the bill allows King County to impose an additional property tax levy at a rate not to exceed 7.5 cents per \$1,000 of assessed value. The first 1 cent of this new levy is dedicated to expanding transit capacity along State Route No. 520. The remainder of the levy is dedicated to transit-related expenditures.

Lastly, the bill authorizes various transit agencies to seek voter approval to impose an annual congestion reduction tax. The amount of the tax may not exceed \$20 per vehicle registered within the taxing authority’s boundaries. The tax, administered by the Department of Licensing, applies when renewing a vehicle registration. Exemptions are provided for farm tractors, farm vehicles, off-road and nonhighway vehicles, snowmobiles, and vehicles registered under chapter 46.87 RCW and the International Registration Plan.

**SB 5470      Relating to providing sales and use tax exemptions for senior residents of qualified low-income senior housing facilities  
(Chapter 483, Laws of 2009)**

This bill provides a sale and use tax exemption for senior residents of qualified low-income housing facilities. The exemption applies to sales of meals and also to “bundled transactions” consisting of a combination of services or of services and meals, when furnished by the lessor or operator of a qualified low-income senior housing facility. A resident must be at least 62 years of age to be eligible for the exemption. However, if the sale is billed to both spouses of a marital community or both domestic partners of a domestic partnership, the sale is exempt if at least one of the spouses or domestic partners is at least 62 years of age.

A qualified low-income senior housing facility must meet the following criteria:

- The facility meets the definition of a qualified low-income housing project under Title 26 U.S.C. § 42 of the federal Internal Revenue Code;
- Has been partially funded under Title 42 U.S.C. § 1485 of the federal Internal Revenue Code; and
- The lessor or operator of the facility has at any time been entitled to claim a federal income tax credit under Title 26 U.S.C. § 42 of the federal Internal Revenue Code.

According to information from the United States Department of Agriculture, residents in four facilities would currently qualify for the exemption.

The bill takes effect August 1, 2009.

**SB 5511      Relating to making changes affecting city-county assistance account distributions in response to the recommendations of the Joint Legislative Audit and Review Committee (Chapter 127, Laws of 2009)**

This Department of Revenue (Department) request bill makes a number of changes to RCW 43.08.290, the statute governing city-county assistance account (CCAA) distributions. The changes will simplify administration for the Department.

In 2005, the Legislature enacted ESSB 6050 to establish the CCAA. The CCAA provides funds to cities and counties that were most severely impacted by the repeal of the motor vehicle excise tax. The CCAA is funded by a portion (1.6 percent) of state real estate excise tax revenues.

Distributions from the CCAA are made quarterly based on amounts certified by the Department by March 1st of each year. RCW 43.08.290 contains the formulae that are used to determine the amounts to be distributed from the CCAA. Elements of the formulae include local sales tax revenues, assessed property values, and population.

This bill makes the following substantive changes to RCW 43.08.290:

- Changes the certification date from March 1st to October 1st, beginning October 1, 2009.
- Provides, after an initial transition period, that the Department's certification is final after a 30-day review period. After the certification becomes final, no changes may be made to the certification.
- Clarifies that distributions are based on actual sales and use tax distributions to cities and counties during the relevant time period, not tax collections.
- Incorporates streamlined sales tax (SST) mitigation payments into the determination of eligibility for, and amounts of, distributions from the CCAA. SST mitigation distributions are treated as annual distributions of local sales and use taxes imposed by the city or county under the authority of RCW 82.14.030(1).
- Includes, after an initial transition period, fiscal year data for both local sales tax distributions and SST mitigation payments in calculating CCAA distributions, instead of using calendar year data.

The bill is retroactive to March 1, 2009.

**SB 5540      Relating to high capacity transportation service  
(Chapter 280, Laws of 2009)**

Under current law, certain transit agencies (city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas) may establish high capacity transportation service. To finance this service, various revenue sources are available, including an employer tax, rental car tax, and a sales and use tax. These revenue sources are all subject to voter approval. Currently, only the regional transit authority in the central Puget Sound region (Sound Transit) finances and operates high capacity transportation service.

This bill allows a transit agency to form one or more “high capacity transportation corridor areas,” provided the transit agency is in a county with a population that exceeds 400,000 and borders another state. A high capacity transportation corridor area (HCTCA) is a separate, independent local government with specific taxing authority, established to finance and provide high capacity transportation service. To finance the service, an HCTCA may use any of the high capacity transportation revenue options available to transit agencies, as noted above. However, the combined tax rates within the boundaries of the transit agency establishing the HCTCA may not exceed the maximum rates currently allowed to be imposed by any single transit agency. An HCTCA may not submit a tax measure to voters before July 1, 2012, and may only obtain voter-approved taxes one time, even if additional taxing capacity remains after the approval.

**SSB 5566      Relating to harmonizing excise tax statutes with the streamlined sales and  
use tax agreement in regards to direct [mail] sellers, telecommunications  
ancillary services, commercial parking taxes, and exemption certificates  
(Chapter 289, Laws of 2009)**

This Department of Revenue request bill amends state law to harmonize excise tax laws with the Streamlined Sales and Use Tax Agreement (SSUTA) in the following ways:

- Provides that the intrastate sale of “direct mail” is sourced to the address of the seller from which the direct mail was sent.
- Clarifies that ancillary services (such as directory assistance and voice mail services) are sourced to the customer's place of primary use of the telecommunication services in respect to which the ancillary services are associated.
- Provides that the SSUTA's requirement of a single jurisdiction-wide tax rate for local sales and use taxes does not apply to local commercial parking taxes.
- Extends the 50 percent penalty for misuse of a resale certificate to misuse of the uniform Streamlined Sales Tax exemption certificate when it is used to claim a purchase for resale exemption.

In addition, the bill was amended to provide relief from interest and penalties for errors in collecting or remitting local sales and use taxes arising out of changes in local sales and use tax sourcing when Washington adopted the SSUTA's uniform general sourcing rules. To obtain penalty and interest relief, the taxpayer must demonstrate that it made a good faith effort to

comply with the sourcing rules. This relief applies to taxpayers with gross income of less than \$500,000. This penalty and interest relief would not apply with respect to transactions occurring after December 31, 2012.

**SB 5568      Relating to enhancing tax collection tools for the Department of Revenue in order to promote fairness and administrative efficiency.  
(Chapter 309, Laws of 2009)**

This bill was requested by the Department of Revenue (Department) to ensure its ability to obtain information in the possession of third parties that may assist in the collection of taxes. The Department's authority to obtain certain information in the possession of third parties was called into question by a 2007 Washington State Supreme Court decision. The bill authorizes the Department to request a superior or district court judge issue a subpoena for records in the possession of third parties that will aid the Department in an audit, collection activity, or a civil or criminal investigation.

This bill also amends RCW 82.32.330, which provides for the confidentiality of taxpayer information and governs when such information may be disclosed. Specifically, the bill:

- Authorizes the disclosure of return or tax information to the court in respect to the Department's application for a subpoena.
- Provides that the service of a subpoena does not constitute a disclosure of return or tax information.
- Authorizes a person served with a subpoena to disclose the existence or content of the subpoena to that person's legal counsel.
- Authorizes disclosure of return or tax information when the Department is a party in a civil action to collect on a contractor's bond.
- Authorizes the Department to disclose return or tax information to the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury.

**SSB 5571      Relating to requiring the use of electronic methods for taxes administered by the Department of Revenue, including filing of taxes, payment of taxes, assessment of taxes, and other taxpayer information  
(Chapter 176, Laws of 2009)**

This Department of Revenue (Department) request bill requires the Department to send all assessments, notices and other information to taxpayers electronically, unless the Department is unable to comply with this requirement. The Department may waive this requirement for good cause.

The bill also requires taxpayers with a monthly tax reporting frequency to file and pay their excise taxes to the Department electronically. This requirement may be waived for good cause. Taxpayers moved from a monthly to an alternate reporting frequency on or after July 26, 2009, are still required to file and pay electronically, if the taxpayer otherwise meets the threshold for monthly filing established by rule of the Department. Taxpayers with quarterly or annual

reporting frequencies still have the option of voluntarily filing and paying their excise tax returns electronically.

Also, the bill requires that refunds issued by the Department be paid electronically if the taxpayer is required to pay taxes electronically and the Department has the necessary account information.

Currently, certain businesses are authorized to pay use tax directly to the Department rather than sales tax to their vendors. To be eligible for this direct pay authority, a taxpayer must either be subject to mandatory electronic funds transfer for payment of its taxes to the Department or make purchases subject to sales or use taxes in excess of \$10 million per calendar year. This bill replaces the mandatory electronic funds payment criterion for direct pay authority with a requirement that the taxpayer be reasonably expected to have a cumulative tax liability of \$240,000 or more in the current calendar year.

**SSB 5616      Relating to connecting business expansion and recruitment to customized training  
(Chapter 296, Laws of 2009)**

Current law provides a business and occupation (B&O) tax credit to participants in the Washington Customized Employment Training Program. The credit is equal to fifty percent of the participant's payments to the employment training finance account.

This bill makes various changes to the Washington Customized Employment Training Program, including allowing participating employers to temporarily defer repayments of training costs previously incurred.

**SB 5680      Relating to the property tax exemption for nonprofit artistic, scientific, historical, and performing arts organizations  
(Chapter 58, Laws of 2009)**

This bill increases the number of days from 25 to 50 per year that the property of nonprofit artistic, scientific, historical, or performing arts organizations may be used by persons not eligible for a property tax exemption. Also, the number of days the property may be used for pecuniary gain or to promote business activities is increased from seven days to 15 days per year. The time used for setup and takedown activities preceding or following a meeting or other event does not count against the 15- and 50-day limitations. The bill also eliminates the requirement that rental charges be reasonable and do not exceed the maintenance and operation expenses created by the user of the property.

**E2SSB 5688 Relating to further expanding the rights and responsibilities of state registered domestic partners (Chapter 521, Laws of 2009)**

This bill is intended to ensure that for all purposes under state law, state-registered domestic partners are treated the same as married spouses.

The terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family are interpreted as applying equally to state-registered domestic partnerships as well as to marital relationships and married persons. New sections are added to the retail sales tax, the estate tax, and the property tax statutes stating in part “the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons . . . .”

The bill also requires the Department of Revenue to provide by rule that, for estate tax purposes, a state-registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the Internal Revenue Code but regardless of whether such interest would be deductible from the federal gross estate those sections of the Internal Revenue Code.

This bill has various effective dates. Much of the bill takes effect July 26, 2009. However, the estate tax provisions take effect January 1, 2014.

**ESSB 5901 Relating to modifying provisions of the local infrastructure financing tool program (Chapter 267, Laws of 2009)**

This bill amends the Local Infrastructure Financing Tool (LIFT) program to simplify and improve its administration.

The LIFT program is available to certain local governments for financing local public improvement projects intended to encourage economic development or redevelopment. As part of the LIFT program, a “sponsoring local government” establishes geographic boundaries for a revenue development area (RDA) from which annual increases in revenues from local sales and use taxes and local property taxes are measured. Such incremental revenues are used to pay principal and interest on general obligation bonds or revenue bonds issued to finance the public improvements. The incremental revenue and, if applicable, revenue from other local public sources used to pay the bonds is matched with a state contribution that must also be used to pay the bonds. For a limited amount of time, the incremental revenue and the state contribution may also be used to pay for the public improvements on a pay-as-you-go basis. The state contribution is in the form of a local sales and use tax, sometimes referred to as the “LIFT tax,” that is credited against the state sales and use tax. There are a number of limitations in the program including a maximum statewide contribution of \$7,500,000 per year for all LIFT projects. The

full \$7,500,000 per year has been awarded by the Community Economic Revitalization Board (CERB) to nine projects throughout the state; and, therefore, applications are no longer accepted.

This bill makes many administrative and technical changes to the LIFT program, including:

- The growth in state and local sales and use tax revenue will be based on estimates made by sponsoring local governments rather than measurements made by the Department of Revenue.
- The requirement that sponsoring local governments issue bonds by the end of the fifth fiscal year that the LIFT tax is imposed is eliminated. Instead, the LIFT tax will cease after the end of the fifth fiscal year if the sponsoring local government fails to issue indebtedness and does not commence construction of the public improvements in the RDA.
- Requirements for annual reports submitted by a sponsoring local government are expanded and will include updated estimates, at least every three years, of how the state has benefited from increases in sales, use, and property tax revenues within the RDA since the sponsoring local government was approved for a LIFT project.
- Limitations on the rate for the LIFT tax are clarified, and existing LIFT jurisdictions are required to select a tax rate by September 1, 2009, for the tax that the jurisdiction will eventually impose to receive its state contribution. Once the tax rate is chosen, it may not be increased.

The bill expires June 30, 2039.

**SB 5909      Relating to clarifying the application of the high technology retail sales and use tax deferral provided by chapter 82.63 RCW (Chapter 268, Laws of 2009)**

This bill modifies the high technology sales and use tax deferral program to make it easier for multiple buildings, each with a different owner but occupied by the same lessee, to qualify for the deferral.

Chapter 82.63 RCW provides a deferral of state and local retail sales and use taxes for the construction of qualifying buildings and acquisition of qualifying machinery and equipment for projects involving research and development (R&D) or pilot scale manufacturing. To qualify for the deferral, the taxpayer must be engaged in advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. If the program requirements are maintained for seven years after the year the facility becomes operational, the repayment of the deferred taxes is waived. The deferral may apply to a building that is leased to a qualified high technology business if the lessor agrees to pass on the economic benefit of the deferral to the lessee.

This bill provides that multiple qualified buildings are eligible for the deferral. Multiple qualified buildings must be leased to the same person and be located within a five mile radius. In the case of multiple qualified buildings, the lessee is responsible for payment of any deferred tax that may become due and payable. The Department of Revenue may develop rules to



calculate the deferral based on apportionment of costs of construction of a building or multiple buildings, where qualifying R&D or pilot scale manufacturing activities are shifted within a building or from one building to another building.

The bill applies to deferral applications received by the Department of Revenue after June 30, 2007.

**SB 5976      Relating to extending tire replacement fees  
(Chapter 261, Laws of 2009)**

This bill eliminates the expiration date for the \$1.00 per tire fee on the sale of new replacement vehicle tires. The current fee was adopted in 2005 and was scheduled to expire July 1, 2010.

**SB 6096      Relating to the taxation of the manufacturing and selling of fuel for  
consumption outside the waters of the United States by vessels in foreign  
commerce  
(Chapter 494, Laws of 2009)**

This bill clarifies the business and occupation (B&O) taxation of the manufacturing of bunker fuel.

Bunker fuel is fuel oil used for the propulsion of ships. Current law (RCW 82.04.433) provides a B&O tax deduction for amounts derived from the sale of bunker fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce. Because the deduction applies to “amounts derived from sales,” the Department of Revenue interprets this deduction as applying only to B&O taxes imposed on wholesale and retail sales of bunker fuel and not to B&O taxes imposed on the manufacturing of bunker fuel. A manufacturer of bunker fuel has brought a refund lawsuit against the Department (*Tesoro Refining & Marketing. Co v. Dept of Revenue*), contending that the bunker fuel deduction may be claimed against its manufacturing B&O tax liability incurred in manufacturing the bunker fuel. The Thurston County Superior Court in May 2009 granted a summary judgment to the Department of Revenue; however, this is likely to be appealed.

This bill clarifies that the bunker fuel B&O tax deduction only applies to wholesale and retail sales of bunker fuel and does not apply to the manufacturing of bunker fuel.

The bill takes effect immediately and applies both prospectively and retroactively.

**ESSB 6169 Relating to enhancing tax collection tools for the Department of Revenue in order to promote fairness and administrative efficiency (Chapter 562, Laws of 2009)**

This bill enhances the authority of the Department of Revenue (Department) to levy the property of tax debtors held by financial institutions to more efficiently collect tax money that is already due.

When the Department is unable to secure payment of delinquent taxes, it often must resort to issuing a tax warrant. When filed with the superior court, a tax warrant has the effect of a judgment against the taxpayer. If the Department is still unable to secure payment of the warrant, the Department may levy the taxpayer's property. To levy upon property held by third parties, such as banks or other financial institutions, the Department will serve the third party with a "notice and order to withhold and deliver." For each taxpayer whose bank account the Department seeks to levy, the Department must serve a separate notice and order to withhold and deliver on the taxpayer's bank.

This bill authorizes the Department to issue a notice and order to withhold and deliver to financial institutions in the form of a list of some or all of the unpaid tax warrants in respect to which no satisfactory payment agreement is in place. The bill requires that these "enhanced" levies must include the taxpayers' federal taxpayer identification number. Financial institutions must respond to the levy within 30 days. If a taxpayer is in default of a payment agreement, unpaid tax warrants issued against that taxpayer could be included in the notice and order to withhold and deliver. These enhanced levies may be served electronically but not more frequently than once a calendar month per financial institution.

The bill directs the Department to work with interested financial institutions to develop policies regarding the frequency of service of the enhanced levies, under what circumstances an enhanced levy will contain only a partial list of unsatisfied tax warrants eligible to be included in the levy, and what type of information should be included in a notice and order to withhold and deliver to ensure that financial institutions can accurately match their records with the names of tax debtors.

**ESSB 6170 Relating to environmental tax incentives (Chapter 469, Laws of 2009)**

This bill provides tax incentives for selected environmental activities and repeals the sales and use tax exemption for hybrid vehicles.

**Renewable Energy**

The bill provides a sales and use tax exemption in the form of a refund of sales or use taxes paid on machinery and equipment used directly in generating electricity from fuel cells, sun, wind, biomass energy, tidal and wave energy, geothermal resources, anaerobic digestion, landfill gas, or technology that converts otherwise lost energy from exhaust. The exemption also applies to charges for installing exempt machinery and equipment.

From July 1, 2009, through June 30, 2011, the exemption amount is 100 percent. Beginning July 1, 2011, through June 30, 2013, the amount of the exemption is equal to 75 percent of the state and local sales tax paid.

A 100 percent sales and use tax exemption is provided for purchases of machinery and equipment used directly in generating electricity using solar energy, but only if the taxpayer develops with such machinery and equipment a facility capable of generating not more than ten kilowatts of electricity. The exemption also applies to charges for labor to install exempt machinery and equipment.

These exemptions take effect July 1, 2009, and expire June 30, 2013.

### **Radioactive Waste Cleanup**

The bill expands eligibility for the business and occupation (B&O) tax rate on radioactive waste cleanup. RCW 82.04.263 provides a B&O tax rate of 0.471 percent for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a prime contractor or subcontractor. The statute defines “cleaning up radioactive waste and other by-products of weapons production and nuclear research and development” to mean:

- The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, non-radioactive hazardous solid and liquid wastes, or spent nuclear fuel;
- The conditioning of spent nuclear fuel;
- Removing contamination in soils and ground water;
- Decontaminating and decommissioning of facilities; and
- Performing activities integral and necessary to the direct performance of cleanup.

This bill changes the definition of “cleaning up radioactive waste and other by-products of weapons production and nuclear research and development” to include information technology and computer support; services rendered in respect to infrastructure; and security, safety and health services. The term is also broadened by replacing activities integral and necessary to the direct performance of cleanup with activities supporting the performance of cleanup. This change is effective July 1, 2009.

### **Hog Fuel Incentives**

A sales and use tax exemption is provided for hog fuel used to produce electricity, steam, heat, or biofuel. Hog fuel is defined as wood waste and other wood residuals including forest derived biomass. This exemption is effective July 1, 2009, and expires June 30, 2013.

### **Biomass Energy Incentives**

A B&O tax credit is provided for harvesters of forest derived biomass sold, transferred, or used to produce electricity, steam, heat, or biofuel. The amount of the credit is:

- \$3 per harvested green ton from July 1, 2010, through June 30, 2013; and
- \$5 per harvested green ton from July 1, 2013, through June 30, 2015.

The credit takes effect July 1, 2009. However, credit may not be earned until July 1, 2010. The credit expires June 30, 2015.

A sales and use tax exemption is provided for forest derived biomass used to produce electricity, steam, heat, or biofuel. The exemption takes effect July 1, 2009, and expires June 30, 2013.

### **Solar Energy and Semiconductor Incentives**

Beginning October 1, 2009, the B&O tax rate is reduced to 0.275 percent on:

- Manufacturing solar energy systems using photovoltaic modules;
- Manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of solar energy systems using photovoltaic modules;
- Wholesale sales of solar energy systems using photovoltaic modules manufactured by the seller; and
- Wholesale sales of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers, manufactured by the seller, to be used exclusively in components of solar energy systems using photovoltaic modules.

The lower B&O tax rate expires June 30, 2014.

The existing sales and use tax exemption provided for gases and chemicals used in the production of semiconductor materials is expanded to include gases and chemicals used in producing silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers. This provision takes effect July 1, 2009, and expires December 1, 2018.

The bill also extends the investment cost recovery incentive program (ICRIP) to “community solar projects.” The ICRIP allows individuals, businesses, or local governments that purchase an eligible renewable energy system to apply for an incentive payment from the electric utility serving the applicant. Payments are capped at \$2,000 annually per applicant. A utility providing incentive payments is allowed to claim a credit against its state public utility tax (PUT) for incentives paid, limited to \$25,000 or 0.25 percent of its taxable power sales, whichever is greater. The ICRIP expires June 30, 2014.

Under this bill, community solar projects are eligible under the ICRIP for incentives of 30 cents for each “economic development kilowatt-hour” of energy produced. The \$2,000 cap on incentive payments is increased to \$5,000, and each applicant in a community solar project is eligible for annual incentives of \$5,000. The expiration date of the ICRIP is extended from June 30, 2014, to June 30, 2020. This provision of the bill takes effect July 1, 2009.

The PUT credit provided to a utility for its investment cost recovery incentive payments is increased from \$25,000 to \$100,000 or 1 percent of the utility's taxable power sales, whichever is greater. Incentive payments to participants in a utility-owned community solar project may only account for up to 25 percent of the total allowable credit. The expiration date for the right to earn tax credits is extended from June 30, 2015, to June 30, 2020. The expiration date for

claiming credits is extended from June 30, 2016, to June 30, 2021. These changes to the PUT credit take effect July 1, 2009.

The PUT credit is estimated to reduce state PUT revenue by \$100,000 in the 2009-2011 Biennium. Because of the limited number of businesses that are believed to qualify for the B&O tax rate reduction, and the sales and use tax exemption for gasses and chemicals, provided to the solar industry, the Department is prohibited by law from disclosing the revenue impact associated with these incentives.

### **Livestock Nutrient Incentives**

The bill amends the existing retail sales and use tax exemption for livestock nutrient management equipment and facilities to provide a fixed list of qualifying equipment and qualifying facilities. The bill also clarifies that the exemption does not apply to labor, services, and tangible personal property related to the construction of new, or the replacement of an existing, qualifying livestock nutrient management facility. These changes take effect July 1, 2009.

### **Log Transportation Business**

The public utility tax on log hauling is reduced from 1.926 percent to 1.37 percent. The 1.37 percent rate is comprised of the base rate of 1.28 percent in RCW 82.16.020(1) and the additional tax in RCW 82.16.020(2) equal to seven percent of the base rate. This tax rate reduction takes effect July 1, 2009, and expires June 30, 2013.

### **High gas mileage hybrid vehicles**

On August 1, 2009, the existing sales and use tax exemption for hybrid vehicles is repealed. However, from August 1, 2009, until January 1, 2011, hybrid vehicles are exempt from the 0.3 percent additional state sales and use tax on motor vehicles for deposit into the multimodal transportation account.

### **SB 6173      Relating to improving sales tax compliance (Chapter 563, Laws of 2009)**

This bill improves sales tax compliance by reducing tax avoidance through the misuse of resale certificates.

Under current law, persons purchasing goods or services for resale are exempt from the retail sales tax if they provide the seller with a resale certificate. The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. Information that is required to be on the certificate is identified in statute, but the certificate is prepared by the buyer, not by the Department of Revenue (Department). Anybody can obtain a resale certificate from the Department's web site. Resale certificates are sometimes misused when individuals purchase items for personal rather than business use or when a business uses a resale certificate for a retail rather than a wholesale purchase.

Purchases of materials by contractors performing construction for consumers (retail construction), where the materials will become part of the completed project, are purchases at wholesale. Likewise, purchases of subcontractor services by retail construction contractors are wholesale purchases. Wholesale purchases are not subject to retail sales tax. To verify that material purchases and subcontractor services are wholesale purchases, a contractor must give a valid resale certificate to the materials supplier or subcontractor. Speculative builders are subject to tax on all purchases of materials and labor for construction on land owned by the speculative builder.

Under this bill, the resale certificate is replaced with a seller's permit issued by the Department. Businesses registered with the Department will be issued a seller's permit if the business makes wholesale purchases, based generally on industry type and reporting history. Businesses that are not entitled to make wholesale purchases will not be issued permits. Except for seller's permits issued to construction businesses, seller's permits would expire after either a two- or four-year period unless an application for renewal is approved by the Department. Businesses that use the Streamlined Sales and Use Tax Agreement (SSUTA) Uniform Exemption Certificate may use that form in lieu of the seller's permit.

The bill establishes a separate seller's permit process for construction contractors. To obtain or renew a seller's permit, a contractor would have to provide detailed information to the Department about material and labor purchases. Seller's permits for qualified contractors would be valid for only 12 months (rather than the 24 or 48 months for other taxpayers). The Department would use the detailed information to determine whether to issue or renew a seller's permit and also to identify contractors who might be improperly making purchases without payment of sales tax.

The bill requires the Department to develop a system for businesses to use to voluntarily verify through electronic means that buyers are eligible to use a seller's permit. It also requires the Department to educate taxpayers on the appropriate use of sellers' permits.

By December 1, 2009, the House Committee on Finance and the Joint Legislative Task Force on the Underground Economy in the Washington State Construction Industry, are each required to prepare a report that reviews the issues and concerns that need to be addressed by the Legislature as a result of the changes made in this bill. The reports will include any recommendations on potential modifications to the provisions of this bill. The Department must provide necessary support and information.

The bill takes effect January 1, 2010.