

Department of Revenue Fiscal Note

Bill Number: 1764 S HB	Title: Asphalt & agg. valuation	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
GF-STATE-State 01 - Taxes 10 - Compensating Tax	(301,000)	(366,000)	(667,000)	(754,000)	(786,000)
Performance Audits of Government Account-State 01 - Taxes 10 - Compensating Tax		(1,000)	(1,000)	(2,000)	(2,000)
Total \$	(301,000)	(367,000)	(668,000)	(756,000)	(788,000)

Estimated Expenditures from:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.1	0.3	0.1	
GF-STATE-State 001-1	54,100	11,300	65,400	11,300	
Total \$	54,100	11,300	65,400	11,300	

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

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Agency Preparation: Beth Leech	Phone: 60-534-1513	Date: 02/27/2023
Agency Approval: Valerie Torres	Phone: 60-534-1521	Date: 02/27/2023
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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Note: This fiscal note reflects language in SHB 1764, 2023 Legislative Session.

COMPARISON OF SUBSTITUTE BILL WITH ORIGINAL BILL:

The substitute bill:

- Clarifies that only the value of asphalt or aggregates qualify for the valuation methodology.
- Includes indirect costs in the value of self-manufactured asphalt or aggregate.
- Changes the public road construction market adjustment to 5%.

CURRENT LAW:

Road construction projects are taxed differently depending on who owns the road. For purposes of this fiscal note, the terms “public road” and “public road construction” refer only to roads owned by the federal government or local government, and the building, repairing, or improving of these roads.

Public road contractors report their income from public road construction under the public road construction business and occupation (B&O) tax classification. In addition, public road contractors must pay retail sales or use tax on all materials they place in, or on, the road as well as on equipment and supply purchases. This applies to materials whether they are purchased, provided by others, or manufactured/extracted by the contractor.

In public road construction, where the contractor extracts or manufactures materials, such as asphalt and/or aggregates, that it incorporates as an ingredient or component of a road, the contractor owes use tax on the value of these materials. In addition, the contractor owes B&O tax under the manufacturing and/or extracting classifications on the value of the materials. For both use tax and B&O tax purposes, the value of these materials is based on comparable sales. The determination of comparable sales requires an evaluation of the following factors: (1) sales at comparable locations in this state; (2) similar products of like quality and character; (3) in similar quantities; (4) under comparable conditions of sale; and (5) to comparable purchasers.

In the absence of comparable sales of similar products as a guide to value, the value is determined by totaling all costs incurred to produce the asphalt, including labor and overhead.

PROPOSAL:

This bill would specify that for use tax purposes, the value of asphalt or aggregates manufactured or extracted by taxpayers that are incorporated as an ingredient or component of a public road is equal to the sum of all direct and indirect costs attributable to the asphalt or aggregate plus a road construction market adjustment of 5% of those costs. The proposal clarifies that this valuation methodology only applies prospectively to tax liability for contracts executed on or after the effective date.

EFFECTIVE DATE:

This bill takes effect on August 1, 2023.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS:

- This estimate assumes all businesses not specifically instructed by the department to use comparable sales use the cost of

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production to value asphalt and aggregates.

- Taxpayers included in this estimate report public road construction B&O tax, manufacturing B&O tax, and use tax.
- The average value of self-manufactured asphalt and aggregates is approximately 87% of the use taxable value reported to the department.
- This legislation impacts 10 months of collections in fiscal year 2024.

DATA SOURCES:

- Department of Revenue, Audit information
- Department of Revenue, Excise tax information
- IHS, Markit forecast for nonresidential structures, November 2022
- Average local sales and use tax rate for fiscal year 2022

REVENUE ESTIMATES:

This bill decreases state revenues by an estimated \$301,000 in the 10 months of impacted collections in fiscal year 2024, and by \$367,000 in fiscal year 2025, the first full year of impacted collections.

This bill also decreases local revenues by an estimated \$135,000 in the 10 months of impacted collections in fiscal year 2024, and by \$165,000 in fiscal year 2025, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2024 -	(\$ 301)
FY 2025 -	(\$ 367)
FY 2026 -	(\$ 374)
FY 2027 -	(\$ 382)
FY 2028 -	(\$ 390)
FY 2029 -	(\$ 398)

Local Government, if applicable (cash basis, \$000):

FY 2024 -	(\$ 135)
FY 2025 -	(\$ 165)
FY 2026 -	(\$ 168)
FY 2027 -	(\$ 172)
FY 2028 -	(\$ 175)
FY 2029 -	(\$ 179)

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS:

This legislation will affect 10 public road contractors.

FIRST YEAR COSTS:

The department will incur total costs of \$54,100 in fiscal year 2024. These costs include:

Labor Costs - Time and effort equate to 0.45 FTE.

- Create special notice and update relevant information on the department's website.
- Respond to tax ruling requests and email inquiries.

- Amend one excise tax advisory.
- Amend four administrative rules.

SECOND YEAR COSTS:

The department will incur total costs of \$11,300 in fiscal year 2025. These costs include:

- Labor Costs - Time and effort equate to 0.1 FTE.
- Update relevant information on the department’s website.
 - Respond to tax ruling requests and email inquiries.

ONGOING COSTS:

Ongoing costs for fiscal year 2026 equal \$11,300 and include similar activities described in the second-year costs. Time and effort equate to 0.1 FTE.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.1	0.3	0.1	
A-Salaries and Wages	33,700	7,500	41,200	7,500	
B-Employee Benefits	11,100	2,500	13,600	2,500	
E-Goods and Other Services	6,300	1,000	7,300	1,000	
J-Capital Outlays	3,000	300	3,300	300	
Total \$	\$54,100	\$11,300	\$65,400	\$11,300	

III. B - Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
EMS BAND 4	126,619	0.0		0.0		
EMS BAND 5	147,919	0.0		0.0		
MGMT ANALYST4	73,260	0.0		0.0		
TAX POLICY SP 2	75,120	0.3	0.1	0.2	0.1	
TAX POLICY SP 3	85,020	0.1		0.0		
TAX POLICY SP 4	91,524	0.0		0.0		
WMS BAND 3	107,685	0.0		0.0		
Total FTEs		0.5	0.1	0.3	0.1	

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the department will use the expedited rulemaking process to amend WAC 458-20-112, titled: "Value of products," WAC 458-20-135, titled: "Extracting natural products," WAC 458-20-171, titled: "Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic," and WAC 458-20-178, titled: "Use tax and the use of tangible personal property." Persons affected by this rulemaking would include taxpayers that engage in public road construction.