

HOUSE BILL REPORT

ESHB 3186

As Passed House:
March 16, 2010

Title: An act relating to imposing a tax on home and community based services to fund services for seniors and people with disabilities.

Brief Description: Imposing a tax on home and community based services to fund services for seniors and people with disabilities.

Sponsors: House Committee on Finance (originally sponsored by Representatives Pettigrew, Walsh, Williams, Hunt, Green, Dickerson, Kagi, Goodman, Orwall, Liias, Seaquist, White and Appleton).

Brief History:

Committee Activity:

Finance: 2/23/10, 3/1/10 [DPS].

Floor Activity:

Passed House: 3/10/10, 65-32.

First Special Session

Floor Activity:

Passed House: 3/16/10, 61-32.

Brief Summary of Engrossed Substitute Bill

- Adds community residential service businesses and adult day health businesses to the public utility tax at a rate of 5.029 percent.
- Places revenue into accounts to provide for vendor rates, compensation to staff, and access to services.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Rick Peterson (786-7150).

Background:

The business and occupation (B&O) tax is Washington's major business tax. The tax is imposed on the gross receipts of business activities conducted within the state. Revenues are deposited to the state General Fund. Depending on the types of activities conducted, a business may have more than one B&O tax rate. Firms that provide services are generally taxed at a rate of 1.5 percent.

The state public utility tax (PUT) applies to public service businesses. It applies to a variety of public and privately-owned utilities. The PUT is applied to the gross receipts of the business. The tax rate depends on the business classification. Classifications include distribution of water (5.029 percent), generation/distribution of electrical power (3.873 percent), telegraph, distribution of natural gas, and collection of sewerage (3.852 percent); urban transportation and watercraft vessels (0.642 percent), hauling of logs (1.3696 percent), and railroads and motor transportation (1.926 percent).

Neither the PUT nor the B&O tax permits deductions for the costs of doing business, such as payments for raw materials and wages of employees. A number of exemptions, credits, deductions, and other preferences have been enacted for specific types of business activities under the PUT and the B&O tax statutes. For example, B&O taxpayers with annual taxable activity under \$28,000 and PUT taxpayers with annual taxable activity under \$24,000 do not have to file tax returns. Businesses that pay the PUT are exempt from the B&O tax on the same activity.

The B&O tax provides a deduction of government payments made to nonprofit businesses that provide health care services and therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, physically-disabled, developmentally-disabled, or emotionally-disabled individuals. The PUT does not have a similar exemption.

Community residential service businesses provide habilitation, instruction, and support to persons with developmental disabilities who live in their own homes. Supports may vary from a few hours per month up to 24 hours per day of one-to-one support. Clients pay for their own rent, food, and other personal expenses.

Adult day health businesses provide a daytime program for adults who need skilled nursing care or a licensed rehabilitative therapist. An adult day health center provides skilled nursing services, rehabilitative therapy such as physical therapy, occupational therapy, or speech-language therapy; and brief psychological and/or counseling services.

Summary of Engrossed Substitute Bill:

Community residential service businesses and adult day health businesses are added to the PUT at a rate of 5.029 percent.

Eighty-one percent of the revenue from the tax on community residential service businesses is deposited into the new Community Residential Investment Account. Money in the account

may be used to increase rates paid to community residential services businesses over amounts provided in the budget bill adopted in 2009, to increase compensation to staff, and to increase the number of individuals receiving services.

Eighty-one percent of the revenue from the taxes on adult day health businesses is deposited in the new Home and Community Based Services Investment Account. Money in the account may be used for home and community based services provided by the Division of Aging and Disabilities Services Administration at the Department of Social and Health Services (DSHS).

New taxes on home and community based services end if federal matching funds are not available. Existing rate caps on local B&O taxes to community residential service businesses and adult day health businesses are retained.

The joint Legislative Audit and Review Committee (JLARC) is directed to conduct a review of these new taxes. The review will consider the benefits of the taxes, compliance with the taxes, and determinations by the Centers for Medicaid and Medicare Services related to the taxes, administrative costs, other administrative issues and other appropriate issues. The JLARC will consult with interested stakeholders and the DSHS and the Department of Revenue. The report is due by December 1, 2015.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 1 which provides definitions until June 30, 2013 for "community residential services business" and "adult day health business", and section 3 which establishes the public utility tax rate for these business and designates the accounts that monies will be deposited into until June 30, 2013, and take effect on July 1, 2010; and section 2 which provides definitions for "community residential services business" and "adult day health business", for after June 30, 2013 and section 4 which establishes the public utility tax rate for these business and designates the accounts that monies will be deposited into after June 30, 2013, and take effect June 30, 2013.

Staff Summary of Public Testimony:

(In support) This legislation will help address funding issues related to community residential services. It will help bring in additional federal funds for Medicaid patients and providers. Given the current budget problems, this bill will allow for an additional funding stream verses simply asking for our budget not to be cut. Currently, our employees are paid less then comparable state workers and this bill will help give these employees a livable wage, which will help stabilize the work force. It will also provide funds to increase capacity. This will benefit all providers in the network and help people who truly have no other option.

(With concerns) This bill should only be a temporary solution and should sunset in three to five years. Home care agencies needs to be preserved as a choice for Medicaid patients. The

wage benchmark in King County is higher than in Snohomish County, creating a huge wage disparity. This bill could increase that disparity and we ask that this issue be addressed.

(Opposed) We are sympathetic the needs of Medicaid funding in this state; however, we do not believe that home care agencies should be classified as a utility like sewer or water. Private duty companies were not brought into this discussion until very recently. There are some unintended consequences of this bill. Only 25 percent of patients qualify for Medicaid, while the other 75 percent are receiving private duty care. This bill will triple the tax on private duty businesses and we will have to raise the cost of services to our patients or go out of business. This bill puts the cost of home care out of the reach of many people with moderate-low to moderate incomes who do not qualify for Medicaid, but still struggle to pay for their care. It will force people into the "gray market" of home care, where people hire unlicensed attendants and put themselves at risk for abuse. Hundreds of home care agencies are going to have to pay this tax, while only a few dozen will benefit from this. This bill forces companies to subsidize their competition.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Misha Wershkel, Service Employees International Union Healthcare #775 Northwest; Scott Livengood, Community Residential Services Association; Melissa Johnson, Addus Healthcare; Jerry Reilly, Eldercare Alliance; Dave Budd, Elder Health Northwest; Chad Higman, Puget Sound Residential Services; Christina Taylor, Elder and Adult Day Services; and Sara Myers, Washington Adult Day Services Association.

(With concerns) Sue Closser, Snohomish County Coalition for a Living Wage; and Janet Michaelson, Sunrise Services.

(Opposed) Leslie Emerick, Home Care Association of Washington and Washington Private Duty Association; David Lawrence, Family Resource Home Care; Debbie Gann, Home Attendant Care; Julie Ferguson, Advanced Health Care; Ron Bode, Washington Private Duty Association; Brian Davis, Good To Be Home Care; and Peter Nazzal, Catholic Community Services.

Persons Signed In To Testify But Not Testifying: None.