HOUSE BILL REPORT
2SSB 5433

As Reported by House Committee On:
Finance

Title: An act relating to modifying provisions of local option taxes.

Brief Description: Modifying provisions of local option taxes.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Regala, Swecker, Rockefeller, Morton, Fraser, Ranker, Fairley and Shin).

Brief History:
Committee Activity:
Finance: 3/24/09, 3/27/09 [DPA].

Brief Summary of Second Substitute Bill
(As Amended by House)

- Allows counties to partially supplant existing funds until January 1, 2015, for the county public safety sales and use tax.
- Allows counties to partially supplant existing funds until January 1, 2015, for the mental health/chemical dependency sales and use tax.
- Allows multi-year lid lifts to supplant existing funds. (In King County, this is allowed only for lid lifts approved in 2009, 2010, and 2011.)
- Allows for the creation of a rural public safety and infrastructure district in the unincorporated areas of counties, and allows a district to impose a tax on utilities; however, King County may impose the tax only until January 1, 2015.
- Limits the ferry district property tax rate in King County to 7.5 cents per $1,000 of assessed value and authorizes an additional property tax in King County at a rate of 7.5 cents per $1,000 to fund transit projects.
- Requires cities and towns within King County to annex large, potential annexation areas in order to receive transportation improvement account and public works account grants and loans after December 31, 2014.
- Allows cities and towns to impose utility taxes on water-sewer districts.
- Requires the State Auditor to conduct a performance audit of King County.

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.

- Imposes the brokered natural gas use tax at the location where the gas is consumed and adds some intent language.
- Allows city and county real estate excise taxes to be used for park maintenance and operation expenditures.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 5 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks and Springer.

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

Staff: Jeffrey Mitchell (786-7139)

Background:

A county public safety sales and use tax was authorized in 2003. Subject to voter approval, counties may impose a tax up to .3 percent. At least one-third of the tax receipts must be devoted to criminal justice programs, including funding of additional police officers and the relief of congested court systems and overcrowded correctional facilities. The levying county is to retain 60 percent of the receipts and the remaining 40 percent will be distributed to cities within the county on a per capita basis. The statute requires that the use of the revenues be stated in the ballot proposition that goes before the voters; further, the receipts may not be used to replace existing funds for such programs. This local sales tax features another differential tax base which departs from the state sales tax base in that the sales of motor vehicles are not subject to the local tax. The tax has been implemented in five counties: Kittitas, Walla Walla, Spokane, Whatcom, and Yakima.

A county mental health/chemical dependency sales and use tax of .1 percent was authorized in 2005. The proceeds of the tax must be devoted to new or expanded county programs devoted to mental health treatment, chemical dependency services, or therapeutic court programs. The tax may not supplant (replace) existing funds for these purposes. The sales and use tax has been imposed in 13 counties: Clallam, Clark, Island, Jefferson, King, Okanogan, San Juan, Skagit, Snohomish, Spokane, Thurston, Wahkiakum, and Whatcom.

Regular property tax revenue for local governments is restricted to a growth rate of 1 percent plus new construction. However, voters may approve regular property tax increases above this 1 percent amount. This voter-approved increase is referred to as a lid lift. A lid lift may be for a single year or for multiple years, not exceeding six years. Multi-year lid lifts must be for a specific purpose and lid lift funds may not supplant (replace) existing funds used for the purpose specified in the lid lift ballot proposition.

Counties are not authorized to impose utility taxes. Cities, while authorized to impose utility taxes, may not impose utility taxes on another municipality unless state statute explicitly authorizes the tax.

A county may create a ferry district in all or a portion of the county, including the area within the corporate limits of any city or town within the county. The governing body of a ferry district is the members of the county legislative authority. A ferry district may levy a property tax on all taxable property located in the district, not to exceed 75 cents per $1,000 of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

The Legislature created the Transportation Improvement Board (TIB) in 1988 to provide grants to cities and counties for high priority local transportation projects that enhance the movement of people, goods, and services. The TIB administers six competitive programs: the Urban Arterial Program, the Urban Corridor Program, the Small City Arterial Program, the Sidewalk Program (urban and small city), the Small City Preservation Program, and the Road Transfer Program (City Assistance Hardship Program).

The Public Works Assistance Account, commonly known as the Public Works Trust Fund, was created by the Legislature in 1985 to provide a source of funding to assist local governments with infrastructure projects. The Public Works Board, within the Department of Community, Trade and Economic Development, is authorized to make low-interest or interest-free loans from the Public Works Assistance Account to finance the repair, replacement, or improvement of the following public works systems: bridges, roads, water and sewage systems, and solid waste and recycling facilities. All local governments except port districts and school districts are eligible to receive loans.

The King County Annexation Initiative is an effort to promote annexation or incorporation of the largest remaining urban, unincorporated areas. These 10 areas are also referred to as potential annexation areas (PAAs). To support annexation or incorporation of the PAAs, the Annexation Initiative provides information to communities on their governance options and financial incentives to cities that annex or incorporate.

Washington imposes a separate and distinct use tax on the use of natural gas or manufactured gas. This tax is referred to as the brokered natural gas (BNG) use tax. Cities may impose a local version of the BNG use tax. The purpose of BNG use taxes is to eliminate differential tax treatment for natural gas purchased from gas companies, which is subject to state and local utility taxes, and gas purchased directly from producers by large, commercial users, which is not subject to utility taxes. The BNG use tax rates are identical to state and local utility tax rates. On May 20, 2008, Division II of the Washington Court of Appeals rendered a decision addressing the location where natural gas is first used for the purposes of imposing BNG use taxes. The appellant in the case, G-P Gypsum Corporation (Gypsum), consumed natural gas during the process of manufacturing wallboard in Tacoma. Gypsum purchased the natural gas near both Sumas and Sumner. The City of Tacoma imposed a local BNG use tax. The city argued that while Gypsum took control of the gas at a location outside the city, Gypsum first "used" the gas inside the city. The court held that, for purposes of the local use tax on BNG, the place of first use is where the taxpayer initially exercises dominion and control over the gas, and not the location where it is burned or stored by the taxpayer.

Cities and counties may impose a .25 percent real estate excise tax (REET) to finance capital projects. Subject to voter approval, cities and counties may impose an additional .25 percent

REET to finance capital projects specified in a comprehensive plan. This tax was authorized in 1990 and to date has been implemented by 132 cities and 19 counties.

Summary of Amended Bill:

Counties are allowed to supplant existing funds until January 1, 2015, for the county public safety sales and use tax. In calendar year 2010, 100 percent of the tax may be used to supplant existing funding. This 100 percent amount is then phased down by 20 percent each year through calendar year 2014.

Counties may partially supplant existing funds until January 1, 2015, for the mental health/ chemical dependency sales and use tax. The initial percentage amount that may be supplanted is 50 percent, which is then reduced by 10 percent each year through calendar year 2014.

The anti-supplanting provisions for multi-year lid lifts are eliminated for levies approved by the voters after the effective date of the bill. However, for King County, this change only applies to lid lifts approved in calendar years 2009, 2010, and 2011.

Counties may create rural public safety and infrastructure districts in the unincorporated areas of the counties. These districts are separate and distinct special purpose governments created for the purpose of providing public safety services and infrastructure within the unincorporated areas of counties. These districts are authorized to impose a tax on utility companies. Generally, this would include electric, gas, telephone, water, sewer, solid waste, and cable businesses; however, districts in counties other than King County may not impose a utility tax on gas companies. A district located in King County may impose a utility tax only until January 1, 2015. Other districts have no similar limitation. The tax rate is generally capped at 6 percent; however, districts in counties other than King County may not impose a rate that exceeds 1 percent on electric power companies.

The ferry district property tax rate for King County is capped at 7.5 cents per $1,000 of assessed value. (The current rate maximum is 75 cents per $1,000.) King County is authorized to impose a property tax at a rate of 7.5 cents per $1,000 to fund transit projects.

Cities and towns within King County may not qualify for new grants and loans from the Transportation Improvement Account and Public Works Account after December 31, 2014, unless the city or town has annexed all large PAAs. A large PAA is an area recognized in the city or town's comprehensive plan and which has a population of 4,000 or more. For PAAs located partially within King County and another county, the 2014 deadline is extended to 2020.

Cities and towns are authorized to impose utility taxes on water-sewer districts. The tax rate is capped at 6 percent.

By January 1, 2011, the State Auditor is required to conduct a performance audit of King County. The audit must assess whether policy changes and programs in the county will effectively reduce overhead and other costs, improve services, and streamline operations. The audit must also identify current deficiencies in recognized best practices in the provision of goods and services by the county.

With respect to natural gas or manufactured gas, the BNG use taxes are imposed at the location where the gas is burned by the taxpayer or stored in a facility of the taxpayer for later consumption.

Cities and counties may use local REETs for park maintenance and operation (M&O) purposes through calendar year 2013 for cities with a population less than 50,000 and counties with a population less than 250,000. The Association of Washington Cities and the Washington State Association of Counties is required to report to the Legislature by December 1, 2013, on the implementation and effectiveness of allowing local REETs to be spent on park M&O.

Amended Bill Compared to Original Bill:

The amendment allows counties to partially supplant existing funds until January 1, 2015, as opposed to entirely supplant existing funding, for the county public safety sales and use tax and multi-year lid lifts. In King County, the partial supplanting for multi-year lid lifts only applies to levies approved in 2009, 2010, and 2011.

The amendment adds the following provisions:

1. Counties may partially supplant existing funds until January 1, 2015, for the mental health/chemical dependency sales and use tax.
2. Counties may create rural public safety and infrastructure districts in the unincorporated areas. These districts may impose a tax on utilities, with various limitations.
3. The ferry district property tax rate in King County is lowered to 7.5 cents per $1,000 of assessed value.
4. King County is authorized to impose an additional property tax at a rate of 7.5 cents per $1,000 to fund transit projects.
5. Cities and towns within King County must annex large potential annexation areas in order to apply for the Transportation Improvement Account and Public Works Account grants and loans.
6. Cities and towns may impose utility taxes on water-sewer districts.
7. The State Auditor is required to conduct a performance audit of King County.
8. The brokered natural gas use tax is imposed at the location where the gas is consumed and intent language is added.
9. Certain cities and counties may use local REETs for parks M&O.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) With the current fiscal situation, this bill gives local, elected officials more flexibility to work with their constituents to help solve budget problems. Every year, counties and cities have smaller budgets and are forced to make cuts. This bill represents a basic finance "toolkit" that local officials can use. This is a comprehensive proposal to give counties and cities hope for the future.

Counties have a variety of regional services they are mandated to provided; however, there is not the same amount of allocated revenue streams. In 2007 the Department of Community, Trade and Economic Development was charged by the Legislature to conduct a study on the fiscal health of counties. It was found that counties only have two primary revenue sources, where as the state and cities have three. This bill will help counties diversify their sources.

Buyers of BNG should be taxed the same regardless of how it was purchased. If this bill does not pass, then it will create a tax loophole for large buyers of natural gas.

The bill allows cities to impose a utility tax on water-sewer districts, which will create greater fairness and close a loophole that now exists.

This bill will help prevent cuts to human services provided by counties and cities.

(With concerns) The utility tax allowed in this bill could result in people canceling their landline telecommunications services, which would result in job loss.

(Opposed to striking amendment) A 6 percent utility tax would substantially increase the cost of electricity and natural gas, which is necessary for oil refineries. These refineries generate millions in property taxes and do not place a huge demand on local services. Many of their purchases on the wholesale level are not from the local utility and this bill should not deal with wholesale transactions. This bill only hands the debate from Olympia to the county seat and if this bill passes, it should be amended so that the utility tax would be voter-approved.

The 6 percent utility tax could harm many industries that use a significant amount of electricity, which will affect the economic vitality of local communities. Even though the tax sunsets in 2015, there is concern, once a tax is implemented it will never be reversed.

This bill does not address the proliferation of taxes at the local level. Instead of simplifying and streamlining, more taxes are just being added.

(Opposed to original bill) None.

Persons Testifying: (In support) Senator Regala, prime sponsor; Dan Satterberg, King County Prosecutor; Eric Johnson, Washington Association of Counties; Jim Justin, Association of Washington Cities; Kent Meyer, City of Seattle; Doug Levy, Cities of Renton, Federal Way, and Kent; Mary Ellen Stone, King County Alliance for Human Services; Linda Benson, Hopelink; and Lee Harper, Northshore Senior Center.

(With concerns) Jeff Dennison, Embarq Communitcations.

(Opposed to striking amendment) Greg Hanon, Western States Petroleum Association; Tim Boyd, Industrial Customers of Northwest Utilities; Bill Stauffacher, Northwest Pulp and Paper Association; Amber Carter, Association of Washington Business; and Steve Gano, AT&T Wireless, Aviation Technical Services, and Goodrich Aviation.

Persons Signed In To Testify But Not Testifying: (In support) Lynda Ring-Erickson, Washington Association of Counties.