

HOUSE BILL REPORT

E2SHB 1069

As Passed House:
February 25, 2021

Title: An act relating to local government fiscal flexibility.

Brief Description: Concerning local government fiscal flexibility.

Sponsors: House Committee on Finance (originally sponsored by Representatives Pollet, Duerr, Leavitt, Wylie, Tharinger, Kloba, Senn, Ryu, Callan and Fey).

Brief History:

Committee Activity:

Local Government: 1/13/21, 1/15/21 [DPS];
Finance: 1/25/21, 1/28/21 [DP2S(w/o sub LG)].

Floor Activity:

Passed House: 2/25/21, 56-42.

Brief Summary of Engrossed Second Substitute Bill

- Allows revenue from criminal justice sales taxes, the Criminal Justice Assistance Accounts, and certain King County excess property tax levies to supplant existing funds through December 31, 2023.
- Allows the sales and use tax for chemical dependency or mental health treatment services collected by a city to be used for modifications to existing facilities to address health and safety needs necessary to the provision of chemical dependency or mental health treatment programs and services.
- Reduces restrictions on the allowed use of funds from criminal justice sales taxes and real estate excise taxes through December 31, 2023.
- Increases the amount of time a water and electricity or sewage lien can be applied after the declaration of an emergency by the Governor that prevents collection.

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

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Berg and Senn.

Minority Report: Do not pass. Signed by 1 member: Representative Robertson.

Minority Report: Without recommendation. Signed by 1 member: Representative Griffey, Assistant Ranking Minority Member.

Staff: Kellen Wright (786-7134).

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 10 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Harris-Talley, Morgan, Orwall, Ramel, Springer, Thai and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Vick and Young.

Minority Report: Without recommendation. Signed by 1 member: Representative Stokesbary.

Staff: Rachelle Harris (786-7137).

Background:

Cities and counties only possess the taxation power that is granted to them by the state Constitution or by the Legislature. The Legislature has granted the power to tax to these local governments in a variety of ways. Some of the taxes authorized by the Legislature can be used without restriction for purposes determined by the cities and counties. Other taxes authorized by the Legislature can only be imposed for limited purposes, and local governments are often prohibited from using this revenue to supplant other revenue that was used for the designated purpose.

Criminal Justice Sales Tax.

One subject for which the Legislature has authorized a local government to impose a tax is for criminal justice expenses. A county legislative authority may, subject to a referendum, impose a sales tax of .01 percent to be used for criminal justice purposes. Ten percent of the revenue from this tax goes to the county, with the remainder distributed between the county and cities based on population. Similarly, a county may submit a proposition to the

voters to authorize an additional .03 percent sales tax. A city may also impose a .01 percent sales tax; the county tax within the city must be reduced by the amount imposed by the city, so the total rate cannot exceed .03 percent. One-third of the revenue from this tax is required to be used for criminal justice purposes. Criminal justice purposes are activities that substantially assist the criminal justice system, including circumstances where there is ancillary benefit to the civil justice system, such as programs providing domestic violence services.

Criminal Justice Assistance Accounts.

Transfers from the state represent another revenue source for local governments. With the County Criminal Justice Assistance Account and the Municipal Criminal Justice Assistance Account, the state directly provides funding for criminal justice purposes to local governments. The amount that a county or city receives from the account depends on various factors, including its crime rate, population, and whether it has imposed the criminal justice sales taxes. These funds must be used for criminal justice purposes and may not supplant existing funds.

Chemical Dependency and Mental Health Treatment Services Tax.

The Legislature has also authorized a sales tax to be used to fund the operation of chemical dependency or mental health treatment programs or for the operation of therapeutic court programs. This tax may be imposed by a county, or, because Pierce County had not imposed the tax by 2011, by a city with more than 30,000 people in Pierce County, at a rate of .01 percent. Revenue from the tax must be used solely for chemical dependency or mental health treatment programs and services and for the operation of therapeutic court programs and services.

Lodging Tax.

Another tax authorized by the Legislature for cities and counties is a lodging tax. This tax applies to the furnishing of lodging, but not to the rental or lease of property, and a sale of lodging of more than one month is presumed to be a rental or lease.

Real Estate Excise Tax.

Cities and counties are also authorized to impose an excise tax on the sale of real property. Counties may impose this tax in unincorporated areas, while cities may impose the tax within the city. In either case, the tax may not exceed .0025 percent of the sale price. The revenue from this tax must be used solely to finance capital improvements. Cities and counties with fewer than 5,000 people that don't plan under the Growth Management Act may instead use the revenue for any capital purpose. A city or county that satisfies various criteria, including producing a written report demonstrating that its capital projects are fully funded, may use \$100,000 or 25 percent of this revenue, whichever is greater, for the maintenance of capital projects. The amount used for maintenance may not, however, exceed \$1,000,000. Cities and counties planning under the Growth Management Act may, with voter approval, impose an additional .0025 percent tax for use on certain identified capital projects. Of this revenue, \$100,000 or 25 percent, whichever is greater, may be used

for infrastructure maintenance or for other capital projects. This amount used in this way may not exceed \$1,000,000.

Property Tax Levies.

Aside from excise or sales taxes, the other primary funding source for local governments is property tax. The amount of property tax that can be imposed is limited. This limit, however, can sometimes be exceeded when authorized by voters for specified purposes. In King County, outside of revenue from levies approved in 2009-2011, this additional revenue cannot supplant existing funding sources. In other counties, revenues from levies approved after 2009 can be used to supplant existing local government funds.

Utility Liens.

Another revenue source for local governments is the fees charged for the provision of water or electricity. A city or town may impose a lien on the property for four months of past due charges, but may not impose a lien for any charges more than four months past due. Similarly, a city or town that owns its own sewer system may charge a fee for sewer service. A lien of up to six months of delinquent charges may be imposed without any recording. A lien for a longer period must be filed with the county auditor.

Summary of Engrossed Second Substitute Bill:

Criminal Justice Sales Tax.

Through December 31, 2023, the criminal justice purposes for which revenue from this tax can be used includes local government programs with a reasonable relationship to reducing interactions with the criminal justice system, including by reducing homelessness or improving behavioral health.

Criminal Justice Assistance Accounts.

Through December 31, 2023, revenue received from the Criminal Justice Assistance Accounts may be used to supplant existing funding.

Chemical Dependency and Mental Health Treatment Services Tax.

Revenue from the Chemical Dependency and Mental Health Treatment Services Tax imposed by a city may additionally be used for modifications to existing facilities to address health and safety needs necessary for the provision of chemical dependency or mental health services funded by the tax.

Lodging Tax.

Sales of lodging of less than one month are presumed to not be a rental or lease and thus subject to sales and use tax.

Real Estate Excise Tax.

Cities and counties imposing the first 0.0025 percent real estate tax may use the greater of \$100,000 or 25 percent of revenue received for the maintenance of capital projects through

December 31, 2023. Cities and counties imposing the additional 0.0025 percent real estate tax may similarly use the greater of \$100,000 or 25 percent of that revenue for the operation and maintenance of capital projects through December 31, 2023.

Property Tax Levies.

In King County, revenues from levies approved in 2015-2022 may be used to supplant existing revenue.

Utility Liens.

A lien for water or electricity may apply for charges more than four months past due if the city or town has been unable to pursue collection or a lien against the premises due to an emergency declaration by the Governor. After the expiration of the declaration, a lien for such past due charges may be imposed within the latter of three months of the expiration or within three months of the ratepayer's failure to abide by a payment plan that would have allowed the ratepayer to pay over a period of six months or more.

Similarly, a lien for past due sewage charges may be effective for more than six months of past due charges without recording of the lien if collection of the charges was impacted by a declaration of an emergency by the Governor. In such circumstances, a lien may be filed for all charges within the period covered by the declaration and may be effective for six months after the expiration of the emergency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 9, which, because of a double amendment, takes effect July 1, 2022.

Staff Summary of Public Testimony (Local Government):

(In support) Local governments are facing budgetary challenges and significant revenue loss as result of the pandemic and economic downturn and are asking the state to help without costing additional funds. This bill allows modest temporary flexibility for local governments to best use funds to respond to their community's most critical needs. This bill does not mandate or require anything, instead it provides options and tools for local governments to help themselves. This sort of flexibility was what was provided during the Great Recession. Keeping communities livable means supporting the most vulnerable, and it is even more important to provide assistance during a pandemic. This flexibility is needed to help in the near term. The flexibility to use funds for maintenance of existing capital facilities is needed as maintenance funding has been cut as budgets have been hit by the pandemic. The flexibility on utility liens in this bill is needed, as utilities are essentially non-profit and if some do not pay for the services, then everyone else will have to pay more. Cities have not been able to shut off service or assess liens for past due charges for

months, and current law would make anything past due over four months unrecoverable. Cities have compassion for struggling residents, but some are choosing not to pay, even when they can.

(Opposed) Washington has the fewest law enforcement officers per capita in the country, and has for 10-years straight. Violent crime and homicides have increased, and now is not the time to allow for expanded use of criminal justice funds. Tourism fuels economic development and generates taxes in multiple sectors. The lodging industry has already been devastated by the pandemic, with tens of thousands of jobs lost, and the money from the lodging tax should be reinvested in hard-hit hospitality industry to generate revenue to help rebuilding of local economies. Lodging facilities have been used by first responders and for quarantine. The hospitality industry has helped the community and now needs community support. Without support, almost half of lodging properties will go into foreclosure. An investment now will allow businesses to prepare for when communities are reopened and will pay off in the future by leading to more revenue. Hospitality industry will be important in leading economic recovery.

(Other) This bill goes further than maintenance of capital facilities into funding other social services. This is a concern because loss of capital funds undermines infrastructure and the housing supply.

Staff Summary of Public Testimony (Finance):

(In support) Plummeting revenues at the local level require flexibility for local government spending. The list of tools provided in this bill has narrowed over time, but the need for this flexibility at the local level is still great. Many local governments are facing dramatic falling revenues. Utility liens are key to allow city owned and publicly operated utilities to extend the time period that they don't go into collection for residents. Local governments use a calendar year-based fiscal year, which is different from the state, so flexibility through the 2023 calendar year is important. Expansion of chemical dependency or behavioral health treatment is needed, along with more flexibility in the use of funds. There is a lot of interest in reducing interactions with police and the criminal justice system. Allowing more flexibility in behavioral health support reduces incarceration and increases health outcomes. Earmarked money will not help local governments dig themselves out of the revenue holes that the COVID-19 pandemic has created. This bill leaves the decision about how to use increased flexibility with local officials, nothing is mandatory. It's important to be able to maintain critical infrastructure and avoid costs of degrading infrastructure. Tacoma is the only city to have imposed the mental health sales and use tax and is very interested in the additional flexibility provided in this bill. It allows additional flexibility for providers to assist in service delivery. Most cities are projecting revenue losses for the year and continue to face economic uncertainty. This bill allows cities to do a little more without requesting additional funding from the state.

(Opposed) Washington Association of Sheriffs and Police Chiefs is specifically opposed to

criminal justice sales tax funding flexibility. Washington has the lowest number of commissioned officers per capita of any state. More than half of law enforcement agencies have very few officers and staff, and we do not want this to be made worse.

Persons Testifying (Local Government): (In support) Representative Pollet, prime sponsor; Candice Bock, Association of Washington Cities; Briahna Murray, City of Tacoma; Mike Hoover, Washington State Association of Counties; Adrian Cortes, City of Battle Ground; Ron Wesen, Skagit County; Michael Jones, City of Blaine; and Blake Baldwin, Chelan County.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Cliff Myers, Visit Vancouver USA; Taran Patal, A-1 Hospitality Group; Samantha Louderback, Washington Hospitality Association; Kathryn Hedrick, Washington State Destination Marketing Organization Association; John Cooper, Washington State Destination Organization Association; and Michael Novakovich, Visit Tri-Cities.

(Other) Bill Clarke, Washington Realtors.

Persons Testifying (Finance): (In support) Briahna Murray, City of Tacoma; Mike Hoover, Washington State Association of Counties; Michael Jones, City of Blaine; and Candice Bock, Association of Washington Cities.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying (Local Government): Amber Carter, Port of Vancouver.

Persons Signed In To Testify But Not Testifying (Finance): None.