Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Local Government Committee

ESSB 5334

Brief Description: Providing a local government option for the funding of essential affordable housing programs.

Sponsors: Senate Committee on Local Government, Land Use & Tribal Affairs (originally sponsored by Senators Lovelett, Kuderer, Frame, Hasegawa, Nguyen, Nobles and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Allows the legislative authority of a county or city to impose an excise tax on the sale of lodging of short-term rentals through a short-term rental platform at a rate of up to 10 percent, with revenue from the tax used for the operation and capital costs of affordable housing programs.
- Authorizes counties and cities to offer exemptions from the tax for one short-term rental property based on the property owner's age or income.

Hearing Date: 3/21/23

Staff: Kellen Wright (786-7134).

Background:

Lodging Taxes.
A sales tax is a tax applied to the sale, rental, repair, or installation of tangible person property, digital products, or some services purchased for the buyer's own use. A license to use real property, for example the furnishing of lodging and other services by a hotel, is subject to sales tax. Renting or leasing property, on the other hand, is not considered a sale, and is therefore not subject to sales tax. The demarcation between a taxable license to use and a rental or lease not subject to tax is the length of the occupancy that is sold; a sale and charge for a continuous

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occupancy of less than one month is presumed to be a license to use the property, while a sale or charge for a longer period is presumed to be a rental or lease.

The state imposes a sales and use tax at a rate of 6.5 percent of the selling price or value of the article sold or used, and the Legislature has authorized counties and cities to impose various sales and use taxes as well.

Counites and cities can also impose up to two separate excises taxes on the sales of short-term lodging for tourism-related purposes. An excise tax is a tax imposed on a specific good or activity. Cigarettes, syrup, real estate sales, and aircraft are all subject to excise taxes in Washington.

This tax can be imposed by the legislative authority of a county or city at a rate of up to 2 percent of the sale of lodging. This tax is credited against the state sales tax that would be imposed on the sale of lodging, meaning that, rather than increasing the cost to the purchaser by the rate imposed, it instead reduces the amount remitted to the state. No city within King County or Yakima County may impose the tax except for Bellevue and the City of Yakima. Other than King County and Yakima County, any county imposing the tax must credit a city for the full amount of the city's tax if a tax is also imposed by the city on a sale within the city.

Revenues from the tax can, outside of King County, be used solely for the purpose of paying for tourism promotion or for the acquisition or operation of tourism-related facilities. For King County, the revenue must be divided between affordable workforce housing; housing, facilities, and services for homeless youth; museums and the arts; and capital or operating programs that promote tourism.

An additional excise tax can be imposed on the sale of lodging by a county or most cities at a rate of up to 2 percent. Seattle can impose the tax at a rate of up to 4 percent. This tax is not a credit against the state sales tax and is instead paid by the purchaser. Cities within Snohomish County and Cowlitz County cannot impose the tax because the counties are imposing a previously authorized 4 percent lodging tax, while certain other counties and cities using tax authority that has since been changed are also authorized to continue to collect the tax at the previous, higher rate.

The imposition of the tax on lodging, when taken together with all other taxes, including sales taxes with one exception, cannot exceed a total rate of 12 percent outside of Seattle. In Seattle, the combined taxes cannot exceed 15.2 percent. A specific sales and use tax that can be imposed by counties and cities for housing and related services is excluded when determining whether the lodging tax limit is exceeded.

The revenue from this additional tax must be used for funding tourism promotion or for the acquisition or operation of tourism-related facilities.

Any change in the rate of local sales and use taxes adopted by a county or city after December 1, 2000, must provide an exemption for sales of lodging that would be taxed, when all applicable taxes are summed, at the greater of 12 percent or the rate that would have applied to such a sale on December 1, 2000. The specific sales and use tax that can be imposed by counties and cities for housing and related services is also excluded when determining whether this lodging tax limit is exceeded.

Short-Term Rentals and Short-Term Rental Platforms.
A short-term rental is a lodging use, outside of a hotel, motel, or bed and breakfast, in which a dwelling unit is offered to a guest for a fee for fewer than 30 consecutive nights on a short-term rental platform. An exemption applies for dwelling units in which the owner resides for at least six months and in which fewer than three rooms at a time are rented. A short-term platform is a company that financially benefits from providing a means through which owners can offer dwelling units for short-term rental.

Summary of Bill:

The legislative authority of a county or city may impose an excise tax on the sale of lodging of short-term rentals through a short-term rental platform. The rate of the tax may be up to 10 percent of the sale, and may not be imposed in increments of less than 1 percent. The county may impose the tax in the unincorporated areas of the county, while a city may impose the tax within the city.

A county or city may offer exemptions from the excise tax based on the property owner's age and/or income under criteria adopted by the county or city. Only one short-term rental property can be exempted from the tax per owner. The exemption criteria and a certification process for issuing the exemptions must be included in the resolution imposing the tax.

Revenue from the tax must be used exclusively for the operating and capital costs of affordable housing programs. These programs include, but are not limited to, homeless housing assistance, temporary shelters, and related services. Revenue may be used to make grants, loans, or to let contracts to nonprofit organizations or public housing authorities for services related to affordable housing programs.

A county or city may retain up to 5 percent of the revenue from the tax for the direct and indirect administrative costs of affordable housing services and programs.

This tax is not considered when determining whether the lodging tax limit has been exceeded, including for determinations made when a county or city changes a sales and use tax rate.

Appropriation: None.

Fiscal Note: Available.

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