

HOUSE BILL REPORT

SSB 5647

As Reported by House Committee On:
Community & Economic Development & Trade

Title: An act relating to clarifying the use of existing lodging tax revenues for tourism promotion.

Brief Description: Clarifying the use of existing lodging tax revenues for tourism promotion.

Sponsors: Senate Committee on Economic Development, Trade & Management (originally sponsored by Senators Fraser, Morton, McAuliffe, Fairley, Swecker, Regala, Hatfield, Spanel, Rockefeller, Kohl-Welles and Rasmussen).

Brief History:

Committee Activity:

Community & Economic Development & Trade: 3/26/07, 3/29/07 [DPA].

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

- Allows lodging tax revenues to be used until June 30, 2013, for operations expenditures for tourism promotion as well as to market and operate special events and festivals.
- Authorizes local lodging tax revenues to be used until June 30, 2013, for tourism related facilities owned by a public entity or a nonprofit 501(c)(3) or 501(c)(6) organization.
- Requires local jurisdictions to submit an annual report to the Department of Community, Trade and Economic Development regarding the use and economic impact of lodging tax revenues.
- Requires a Joint Legislative Audit and Review Committee report on the use and economic impact of lodging tax revenues.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

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.

Majority Report: Do pass as amended. Signed by 5 members: Representatives Kenney, Chair; Pettigrew, Vice Chair; Chase, Darneille and P. Sullivan.

Minority Report: Do not pass. Signed by 4 members: Representatives Bailey, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Haler and Rolfes.

Staff: Tracey Taylor (786-7196).

Background:

Lodging Tax

The lodging tax, also known as the local hotel-motel tax, is applied to charges for lodging at hotels, motels, rooming houses, private campgrounds, recreational vehicle parks, and similar facilities for continuous periods of less than one month. The tax rate is up to 2.0 percent and all cities and counties that levy the tax have adopted the maximum rate. The tax is credited against the state retail sales tax of 6.5 percent in order to prevent the customer from incurring an additional tax.

Initially authorized in 1967 to provide King County with a funding source for the building of the Kingdome, the lodging tax was incrementally expanded over the years to cover additional cities and counties and fund uses. In 1997, the Legislature repealed the assortment of multiple uses for the lodging tax and instead required the future revenues to be used for tourism-related purposes.

In 2005, the lodging tax revenue was up 9.8 percent, distributing \$21.75 million to 141 cities and 35 counties.

Current Statutory Scheme

Any municipality is authorized to acquire and to operate tourism-related facilities. This can be done by the municipality individually or jointly. The statute defines "tourism-related facility" as "real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities." A municipality is authorized to levy and collect a lodging tax of up to 2 percent on the sale or charge made for the furnishment of lodging. All revenues from this tax shall be credited to a special fund and "used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities." "Tourism promotion" is defined as "activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists."

Recent Attorney General Opinion (AGO 2006 No. 4)

In response to an inquiry from Senator Fraser, Attorney General McKenna (AG) issued a formal opinion (AGO) regarding the utilization of lodging tax revenues. Three questions were posed and answered:

- "Must a municipality have an ownership interest in a tourism-related facility in order to allocate lodging tax revenues for its operation?"
- May a municipality spend lodging tax revenues on operating expenses of special events and festivals designed to attract tourists which are operated by non-municipal entities?
- May a municipality enter into contracts with tourism promotion agencies that provide advance payment of hotel-motel revenues for tourist promotion?"

Citing lack of legislative clarity and action since the last AGO (AGO 2000 No. 9) on this subject, the AG opines that there still must be some governmental interest in the facilities receiving lodging tax funds. However, there is nothing prohibiting the Legislature from amending the statute to expressly allow municipalities to expend lodging tax receipts on the operations of non-governmentally owned facilities.

The lodging statute currently expressly limits the use of lodging taxes on special events and festivals designed to attract tourists to marketing activities only. The AG concluded that there is no statutory exception to this express limitation of fund use. For a period of time in the 1990s, municipalities were allowed to use the proceeds directly for the funding of special events or festivals; however, the current limiting language was adopted in 1997.

The AG concluded also that advance payment of lodging tax revenues to tourist promotion agencies for tourist promotion activities is prohibited under RCW 42.24.080. This statute requires that all claims presented against a municipality for any contractual purpose must be audited prior to payment.

Summary of Amended Bill:

The definition of "tourism-related facility" is amended to allow for facilities owned by a public entity, a 501(c)(3) or 501(c)(6) organization, a business organization, a destination marketing organization, a main street organization, a lodging association, or chamber of commerce.

Revenues from the lodging tax may be used for operations expenditures for tourism promotion. In addition, the tax revenues may be used to market and operate special events and festivals. Revenues may also be used for tourism-related facilities owned by a public entity or a nonprofit 501(c)(3) or 501(c)(6) organization. This authorization expires June 30, 2013.

The local jurisdictions utilizing their lodging tax revenues under this act are required to submit annual accountability reports on the use of funds for festivals, special events, and tourism-related facilities owned by a 501(c)(3) or 501(c)(6) nonprofit. Finally, the Joint Legislative Audit and Review Committee is required to report to the Legislature and the Governor by September 1, 2012, regarding the expenditures and economic impact of the festivals, special events, and tourism-related facilities owned by a 501(c)(3) or 501(c)(6) nonprofit organization.

Amended Bill Compared to Substitute Bill:

The amended bill clarifies 501(c)(6) like organizations such as business organizations, destination marketing organizations, main street organizations, lodging associations, and chambers of commerce may operate a tourism-related facility. In addition, the amended bill requires annual accountability reports on the use of funds for festivals, special events, and tourism-related facilities owned by a 501(c)(3) or 501(c)(6) nonprofit. The amended bill requires a report by the Joint Legislative Audit and Review Committee to the Legislature and the Governor by September 1, 2012, regarding the expenditures and economic impact of the festivals, special events, and tourism-related facilities owned by a 501(c)(3) or 501(c)(6) nonprofit organization. Finally, the amended bill expires on June 30, 2013.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Currently, two counties have this kind of flexibility in the utilization of their lodging tax revenues. This bill would allow the rest of Washington to have this same flexibility. There must be substance in a community to draw in tourists, not just marketing. Prior to the AGO, a number of jurisdictions were using their lodging revenues in this manner, so it does not change current practice. We feel that the current law is pretty narrow as it requires facilities to be tourism-related, and the current definition of "tourist" is limited. Given the role of the local lodging tax advisory committees in most jurisdictions, this is a closely monitored program. Moreover, this is an important clarification for the many special events and festivals that do draw tourists.

(Opposed) This tax originated from King County's construction and financing of the Kingdome. The other jurisdictions wanted to receive the same tax revenue for tourism promotion. There is a great deal of history to this tax, and you cannot necessarily compare the two counties to the rest of Washington. For many of the convention and visitors bureaus, most of their budgets come from the local lodging tax revenues. Also, some local governments have twisted the "tourism-related facility" and "tourism promotion" definitions when funds were short to use funds for inappropriate purposes. This is not a clarification bill, but a detrimental change that will create havoc by allowing the funds to be used for purposes never intended under the original law. In addition, this bill shatters the nexus between the source of funds -- a tax on overnight stays at hotels and motels -- and the use of funds. There must be "heads in beds" in order to maintain the integrity of the funds. If the lodging tax revenues are not invested in such a way as to generate overnight stays, then the funds will be depleted. Many of our current tourism promotion activities are threatened by this bill.

Persons Testifying: (In support) Senator Fraser, prime sponsor; Jim Justin, Association of Washington Cities; Doug Levy, City of Federal Way; Julie Murray, Washington State Association of Counties; and Susie Tracey, Washington State Arts Alliance.

(Opposed) Becky Bogard, Washington Association of Convention and Visitors' Bureaus; and Jan Simon and T.K. Bentler, Washington State Hotel and Lodging Association.

Persons Signed In To Testify But Not Testifying: None.