

HOUSE BILL REPORT

HB 3179

As Reported by House Committee On:
Finance

Title: An act relating to local excise tax provisions for counties and cities.

Brief Description: Revising local excise tax provisions for counties and cities.

Sponsors: Representatives Springer and Ericks.

Brief History:

Committee Activity:

Finance: 2/9/10 [DPS].

Brief Summary of Substitute Bill

- Allows counties to impose the public safety sales and use tax until January 1, 2015, without voter approval.
- Allows cities to impose the public safety sales and use tax at a rate not to exceed 0.1 percent.
- Requires cities to obtain voter approval to continue imposing the public safety sales and use tax after December 31, 2014.
- Eliminates the non-supplant language in the public safety sales and use tax.
- Allows a city with a population over 200,000 and located in a county with a population over 800,000 to impose the mental health/chemical dependency sales and use tax if the county has not imposed it by January 1, 2011.
- Eliminates the non-supplant language in the criminal justice sales and use tax.
- Authorizes a county utility tax.
- Authorizes a city to impose a utility tax on water-sewer districts.
- Allows the real estate excise tax (REET) II to be spent on park maintenance and operations expenditures until January 1, 2014.
- Conforms the definition of capital project in REET II with REET I by adding additional facilities.
- Imposes brokered natural gas use tax at the location where the gas is consumed or stored by the customer.

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.

- Allows local gambling revenue to be used for general public safety programs.
- Allows the state-shared hotel-motel tax to be used for any governmental purpose that will maintain or enhance tourism, including public safety improvements.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hunter, Chair; Conway, Ericks, Santos and Springer.

Minority Report: Without recommendation. Signed by 4 members: Representatives Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

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 0.3 percent. At least one-third of the tax receipts must be devoted to criminal justice purposes, fire protection purposes, or both. A levying county retains 60 percent of the receipts and the remaining 40 percent is distributed to cities within the county on a per capita basis. The use of tax receipts must be stated in the ballot proposition that goes before the voters. Until calendar 2010, tax receipts could not supplant (replace) existing funds being used for the purpose of the sales and use tax as provided in the ballot proposition. In 2009 the Legislature amended this non-supplant restriction, allowing counties to partially supplant existing funds until January 1, 2015. The sales and use 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 0.1 percent was authorized in 2005. The proceeds of the tax must be devoted to county mental health treatment, chemical dependency, and therapeutic court programs and services. Until calendar 2010 tax receipts could not supplant (replace) existing funds being used for these programs and services. In 2009 the Legislature amended this non-supplant restriction, allowing counties to partially supplant existing funds until January 1, 2015. 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.

Counties may impose a local sales and use tax of 0.1 percent for criminal justice programs. This tax may be levied only by counties; however, the receipts are shared with cities: 10 percent goes to the county and the remaining 90 percent is apportioned to the county and all cities within the county on the basis of population. The initial imposition of the tax is subject to potential referendum by the voters. Currently 32 counties are levying the tax.

County legislative authorities may impose an excise tax on each sale of real property in unincorporated areas of the county. Similarly, city and town legislative authorities also may

impose an excise tax on each sale of real property within their corporate limits. The rate of this real estate excise tax (REET) I may not exceed 0.25 percent of the selling price. Revenues generated from REET I must be used for financing qualifying capital projects and for housing relocation assistance. Furthermore, revenue from REET I may not supplant other funds reasonably available for these capital projects.

Counties, cities, and towns that are required to fully plan under the Growth Management Act (GMA) may impose an additional REET on each sale of real property that may not exceed 0.25 percent of the selling price (REET II). Counties, cities, and towns that have opted, but are not required to fully plan under the GMA, may impose REET II with voter approval. With some exceptions, revenues generated from REET II may only be used for financing capital projects specified in the capital facilities element of a comprehensive plan adopted under the GMA. Furthermore, revenue from REET II may not supplant other funds reasonably available for these capital projects.

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.

Counties, cities, and towns are authorized to impose a tax on gambling activities. Tax rates vary depending upon the type of activity. State law requires any jurisdiction imposing a gambling tax to use the revenue primarily for local gambling enforcement programs.

A "hotel-motel" tax is a special sales tax on lodging rentals by hotels, motels, rooming houses, private campgrounds, RV parks, and similar facilities. A local option hotel-motel tax was first authorized in 1967 for King County to build the Kingdome. The rate was 2 percent, but the tax was credited against the regular state sales tax which is imposed on lodging charges. Therefore, the total amount of tax paid by the consumer was not increased as a result of this tax. Authority to impose a hotel-motel tax was broadened, first in 1970 to include the cities of Tacoma and Spokane, and then in 1973 to include all municipalities (counties, cities, and towns) except some in King and Yakima counties. Thirty-seven counties and 144 cities impose the tax. Generally, hotel-motel taxes must be used solely for the purpose of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. King County is a major exception where a number of different uses are allowed.

Summary of Substitute Bill:

Counties are allowed to impose the public safety sales and use tax without voter approval until January 1, 2015. If a county has not received voter approval to impose the tax, the county must obtain voter approval to continue imposing the tax on and after January 1, 2015.

Cities are given authority to impose the public safety sales and use tax at a rate not to exceed 0.1 percent. To continue imposing the tax on or after January 1, 2015, a city must obtain voter approval. If a county imposes the public safety sales and use tax prior to a city within the county, the city tax rate may not exceed an amount that would cause the total tax rate for the county and city to exceed 0.3 percent. If a city imposes the tax prior to the county in which the city is located, the county must provide a credit against its tax for the city tax. Fifteen percent of the tax proceeds received by a city imposing the public safety sales and use tax must be distributed to the county.

The non-supplant restrictions for the public safety sales and use tax are completely eliminated.

Beginning January 1, 2011, a city with a population in excess of 200,000 and located in a county with a population over 800,000 is authorized to impose the mental health/chemical dependency sales and use tax if the county has not imposed the tax. Once a city has imposed the tax, the county would be prohibited from imposing the tax.

With respect to the criminal justice sales and use tax, the non-supplant restrictions are completely eliminated and criminal justice purpose is clarified to include human services that substantially assist the criminal justice system.

Counties are authorized to impose a tax on utility companies. Generally, this would include electric, gas, telephone, water, sewer, solid waste, and cable businesses; however, counties with a population of 1.5 million or less may not impose a utility tax on gas companies. The tax rate is generally capped at 6 percent; however, counties with a population of 1.5 million or less may not impose a rate that exceeds 1 percent on electric power companies. Counties must provide a credit for utility service subject to a city utility tax.

Cities and towns are authorized to impose a business tax on water-sewer districts. The tax rate may not exceed 6 percent. The tax may only be imposed on the gross income of a district derived from services provided within the city or town.

Until January 1, 2014, cities and counties may use real estate excise taxes (REET) II for the maintenance and operation of park facilities. A city or county using REET II for the maintenance and operation of parks may not use revenues to finance park facilities. The definition of "capital project" for REET II is expanded to include: parks; recreational, law enforcement, fire protection, water flood control, administrative, and library facilities; and trails. The non-supplant restrictions for REET II are eliminated.

The brokered natural gas use tax is imposed at the location where the gas is burned by the taxpayer or stored in a facility of the taxpayer for later consumption.

The permitted uses of local gambling taxes are expanded to include any public safety purpose.

The permitted uses of state-shared hotel-motel taxes are expanded to include expenditures for maintaining or enhancing tourism, which specifically includes public safety improvements.

Substitute Bill Compared to Original Bill:

The substitute bill changes the city-county shared-distribution of the public safety sales and use tax where the city imposes the tax. Eighty-five percent will be retained by the city and 15 percent distributed to the county.

Clarifications are made to the public safety sales and use tax with respect to determining the date of initial imposition of the tax and applying the 0.3 percent rate cap.

The existing non-supplant restrictions for the mental health/chemical dependency sales and use tax are restored.

The county utility tax deduction for gross income derived from consumers within cities is replaced with a tax credit for any utility service subject to a city utility tax.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 7, which reinstates prior law related to modifying the REET II provisions after a scheduled expiration and takes effect June 30, 2012.

Staff Summary of Public Testimony:

(In support) We are in extraordinary times, especially for cities and counties. This bill combines provisions found in other local government financing bills. It is permissive only and gives them a greater list of options. This is about finding some flexibility within the existing system. City councils will be responsible with these tools. It allows cities to discuss with their citizens which tools will work best for them. Cities are struggling with the same economic conditions that the state and federal government are, but have fewer options in dealing with it. Funding for human services has been cut in a time when it is needed most and this bill will help restore some of this funding.

(With concerns) The utility tax will create an unfair cost-shift from payers who are exempt to payers who are not. The administration for collecting the tax would be complicated.

(Opposed) With adding the utility tax to current taxes on wireless customers, it will raise the tax rate to 20 percent and this is unfair. Despite current economic conditions, we need to

keep investing in infrastructure. This bill broadens what is appropriate to spend the hotel-motel tax on and can divert funds away from tourism promotion. These funds are needed to continue to be spent on tourism promotion. Tourists ultimately pay into the state with sales tax. This is a poor time to be considering these taxes, especially when water/sewer districts are seeing increased delinquencies. The utility tax is very regressive, and tap water and sewer services are basic essential utilities. The provision on brokered natural gas creates a second definition of "first use," which further complicates our tax code. It also removes the non-supplant language, making it more difficult for voters to be able to prioritize what their city budgets are spent on.

Persons Testifying: (In support) Representative Springer, prime sponsor; Representative Ericks; Scott Merriman, Association of Washington Counties; Jim Justin, Association of Washington Cities; and Kelsey Beck, Food Lifeline and King County Alliance of Human Services.

(With concerns) Steve Lindstrom, Sno-King Water District Coalition.

(Opposed) Dan Youmans, AT&T; Bill Clarke, Washington Realtors Association; Milt Doumit, Verizon; John Cooper, Yakima Valley Visitors and Convention Bureau; Tammy Blount, Tacoma-Pierce County Regional Tourism Association; Becky Bogard, Washington State Destination Marketing Organization; Tim Boyd, Industrial Customers of Northwest Utilities; Joe Daniels, Washington State Association of Sewer-Water Districts; Aimee Tylor, Washington State Lodging Association; and Amber Carter, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.