

# HOUSE BILL REPORT

## ESHB 3179

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### As Amended by the Senate

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

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

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Springer and Ericks).

#### **Brief History:**

##### **Committee Activity:**

Finance: 2/9/10 [DPS].

##### **Floor Activity:**

Passed House: 2/16/10, 51-47.

Senate Amended.

Passed Senate: 3/5/10, 28-18.

#### **Brief Summary of Engrossed Substitute Bill**

- Allows cities to impose, with voter approval, the public safety sales and use tax at a rate not to exceed 0.1 percent.
- 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.
- Imposes brokered natural gas use tax at the location where the gas is consumed or stored by the customer.
- Allows local gambling revenue to be used for general public safety programs.

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#### **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.

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*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.*

**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.

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.

### **Summary of Engrossed Substitute Bill:**

Cities may seek voter approval to impose the public safety sales and use tax at a rate not to exceed 0.1 percent. 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 imposed 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.

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.

### **EFFECT OF SENATE AMENDMENT(S):**

- Removes a repeated sentence in the 0.3 percent public safety sales/use tax.
- Clarifies the timing of the city and county voter-approved tax in the 0.3 percent public safety sales/use tax.
- Cities which may impose the 0.1 percent sales/use tax for mental health must have population of 30,000 (from 200,000) in a county with a population of 800,000.
- Clarifies that if a city imposes the 0.1 percent sales/use tax for mental health, counties subsequently imposing the same tax after January 1, 2011, must credit their tax against the city tax.
- Removes human services as one of the ancillary civil justice system purposes of the 0.1 percent criminal justice sales and use tax.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** 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.