HOUSE BILL REPORT
ESHB 1839

As Passed House:
March 11, 2019

Title: An act relating to requiring eligible arena projects to fully pay the state and local sales tax within ten years of commencing construction.

Brief Description: Requiring eligible arena projects to fully pay the state and local sales tax within ten years of commencing construction.

Sponsors: House Committee on Finance (originally sponsored by Representatives Sullivan, MacEwen, Pettigrew, Springer, Vick and Valdez).

Brief History:

Committee Activity:

Finance: 2/19/19, 2/25/19 [DPS].

Floor Activity:

Passed House: 3/11/19, 94-4.

Brief Summary of Engrossed Substitute Bill

- Provides for the deferral of state and local sales and use taxes for eligible projects that may include a qualifying arena and associated parking structures, plazas, tunnels, and public spaces, or an ice hockey practice facility.
- Directs repayments of deferred state retail sales and use taxes to be deposited into the Home Security Fund Account, the Fair Fund, and the State General Fund.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Morris, Orwall, Springer, Vick and Wylie.

Minority Report: Do not pass. Signed by 2 members: Representatives Orcutt, Ranking Minority Member; Stokesbary.

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 1 member: Representative Young, Assistant Ranking Minority Member.

Staff: Tracey O'Brien (786-7152).

Background:

Retail Sales and Use Taxes.
Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Local Option Taxes for High Capacity Transportation.
Regional transit authorities (RTA), certain transit authorities, and high capacity transportation (HCT) corridor areas may enact certain local option taxes for the planning, constructing, and operating of HCT, commuter rail, and feeder transportation systems. These local option taxes must be approved by voters. The local taxes include a rental car tax of up to 2.172 percent, an employer tax of up to $2 per employee per month, and a sales and use tax of up to 1 percent. If a county has imposed the 0.1 percent sales tax for criminal justice and in RTAs in which any member county has imposed the 0.1 percent sales tax for criminal justice, the local option sales and use tax for HCT may not exceed 0.9 percent. The maximum rate that may be imposed for an RTA that includes a county with a population of more than 1.5 million residents is 1.4 percent.

Interest Rates for Excise Tax Assessments.
The interest rate assessed on delinquent excise is calculated on an annual basis. The rate that must be charged shall be an average of the federal short-term rate plus 2 percentage points. The rate must be calculated by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average must be calculated using rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

Since 1992 the interest rate on excise tax assessments has ranged from 2 to 9 percent. The interest rate for calendar year 2019 is 4 percent.

Tax Preference Performance Statement.
State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate

the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Home Security Fund Account.
The state's share of the $62 homeless housing and assistance surcharge is deposited into the Home Security Fund Account (Fund). The Fund is an appropriated account and may be used only for homeless housing programs.

Expenditures from the Fund must be made by the Director of the Department of Commerce or the Director's designee. The Office of Financial Management must secure an independent expenditure review of state homeless assistance and housing surcharge funds received and deposited into the Fund on a biennial basis. The stated purpose of the expenditure review is to assess the consistency in achieving policy priorities within the private market rental housing segment for housing persons experiencing homelessness. The first biennial expenditure review is due February 1, 2020.

Fair Fund.
State law requires that each fiscal year the state treasurer transfer $2 million from the State General Fund into the Fair Fund administered by the Washington State Department of Agriculture. Qualifying agricultural fairs are eligible to receive allocations from the Fair Fund after conducting two successful, consecutive annual fairs. With the exception of county fairs and some youth fairs, all allocations must be made only as reimbursement for premiums or prizes awarded to fair participants.

Eighty-five percent of all allocations from the Fair Fund must be distributed to agricultural fairs based on merit. The remaining 15 percent may be split between administrative expenses, which cannot exceed 5 percent, and special assistance for participating fairs.

Summary of Engrossed Substitute Bill:

A qualifying business may apply to the Department of Revenue (DOR) for a tax deferral and payment plan for state and local sales and use taxes related to an eligible project. An eligible project is a project consisting of either or both a qualifying arena and an ice hockey practice facility.

A "qualifying arena" is defined as a multipurpose sports and entertainment facility owned by the largest city in a county with a population of at least 1.5 million persons that is being redeveloped to attract professional ice hockey and basketball league franchises. It includes the arena, associated parking structures, plazas, public spaces, and one or more tunnels connecting the parking structures to the arena.

An ice hockey practice facility means one or more contiguous structures of up to 200,000 feet located within 10 miles of the qualifying arena that contains at least three ice rinks and is being developed to attract a professional ice hockey franchise. It may include ice rinks, spectator viewing locations, locker rooms, strength and conditioning rooms, administrative offices, retail space, food service facilities, and other amenities related to the operation of a state-of-the-art ice hockey arena.

A "qualifying business" must be a business entity that exists for the primary purpose of engaging in commercial activity for profit and has entered into a lease or occupancy agreement with the fee owner of a qualifying arena and/or ice hockey practice facility to engage in the development of an eligible project.

The tax deferral and payment plan must be submitted by October 1, 2019. It must include information regarding the project location, estimated or actual costs of the project, time schedules for completion and operation of the project, and other required information. The DOR must rule on the application within 60 days. The application and any other information received by the DOR for the administration of a deferral is not considered confidential.

Upon approval of a payment plan, the DOR must issue a sales and use tax certificate for state and local retail sales and use taxes as well as local option HCT sales taxes. The certificate may only be used for sales and use tax liability incurred after the date of issue and expires once the eligible project becomes operationally complete. The eligible project will be considered operationally complete if it is capable of being used for its intended purpose as described in the application submitted to the DOR. The certificate recipient must notify the DOR of operational completion and the DOR must review the qualifying business's records to ensure the correct amount of taxes has been reported and will be repaid.

The repayment of the deferred sales and use taxes must begin in the first calendar year following the date the eligible project was certified as operationally complete. Repayments are due each January 1 for the next eight years; however, the qualifying business may request an accelerated repayment schedule. Each payment must be at least 12.5 percent of the tax due plus interest. The interest rate assessed must be the same as the interest rate assessed on delinquent taxes. Interest begins accruing on the date the eligible project is certified as operationally complete and accrues until deferred taxes are fully repaid.

The repayments of the taxes due must be equally deposited by the State Treasurer into the Home Security Fund Account (1/3), the Fair Fund (1/3), and the State General Fund (1/3). Any interest accrued and assessed that is repaid must be deposited into the State General Fund. If the qualifying business is authorized to pay on an accelerated schedule, any amount of taxes deferred in excess of the annual repayment of 12.5 percent of the taxes due must be deposited into the State General Fund.

The obligation to repay the deferred sales and use tax is not extinguished by the insolvency or other failure of the qualifying business. In addition, the transfer of ownership does not terminate the repayment plan if the transferee agrees in writing to be bound by the obligation and the DOR approves. If the approval is not unreasonably withheld, conditioned, or delayed, the transferee is solely liable for the repayment of the deferred taxes.

If the project is not operationally complete within three calendar years from the date the DOR issued the certificate, or if the DOR determines at any time that the project is no longer eligible for the deferral under this act, the amount of taxes outstanding for the project become immediately due and payable. Interest, but not penalties, must be assessed on the amount of taxes outstanding and must accrue retroactively to the date the certificate was originally issued.

A "project" is defined as the construction of new improvements, the renovation of existing improvements, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those improvements, personal property, and site preparation. It includes materials used and labor services rendered in relation to the planning, site preparation, construction, renovation, and installation. Personal property means tangible personal property with a useful life of one year or more that is used in the operation of the eligible project. Site preparation includes soil testing, site clearing and grading, demolition, or other related activities initiated prior to construction.

This act expires January 1, 2030.

The Tax Preference Performance Statement indicates that this tax preference is intended to provide tax relief for certain businesses or individuals. The specific public policy objective is to increase the fiscal stability of multipurpose sports and entertainment arenas in Washington, thereby strengthening the economic vitality of the communities surrounding the arenas and practice facilities.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This is one of the biggest bets in the history of Seattle—$1.6 billion in private investment for the renovations to the Key Arena, the building of related practice facilities and the acquisition of a National Hockey League (NHL) franchise, as well as a commitment of $70 million for related transportation improvements. The interest in the NHL team was demonstrated by the sale of 10,000 reserved season tickets in three minutes. The arena will be a state-of-the-art facility that will host the Women's National Basketball Association's Seattle Storm, music events, and beginning in 2021, an NHL hockey team. Due to the current limitations of the Key Arena, many tours and events have bypassed Seattle to take advantage of better facilities in neighboring states and provinces.

This is not just about entertainment, but also the economic impact of these community assets. Kids getting involved in youth hockey generates economic impacts through the purchase of equipment and the hiring of coaches and officials. The construction of the arena and related facilities will result in hundreds of thousands of worker hours as well as middle-class wage jobs. There are also job training and pre-apprenticeship opportunities. The ownership group of the NHL franchise, Oak View Group (OVG), has already demonstrated its passion for helping the youth in our communities by partnering with YouthCare. YouthCare operates 13 shelter facilities for homeless youth, among other programs. The OVG has offered YouthCare the opportunity to be its primary community partner.

This is a deferral of taxes that will be repaid with interest once the arena is open to generate revenue. Both the football and baseball stadiums received a similar opportunity to defer taxes.

(Opposed) None.

Persons Testifying: Representative Sullivan, prime sponsor; Todd Leiweke, National Hockey League Seattle and Oak View Group; Melinda Gionengo, YouthCare; Mark Riker, Washington Building Trades; Brad Boswell, Ceis Bayne East Strategic; Andy Cole, Greater Seattle Hockey League and Metropolitan Hockey League; John Barr, National Hockey League to Seattle; and Kelly Goscinski, Washington Wild Female Hockey Association.

Persons Signed In To Testify But Not Testifying: None.