HOUSE BILL REPORT
ESSB 5334

As Reported by House Committee On:
Local Government

Title: An act relating to providing a local government option for the funding of essential affordable housing programs.

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 History:

Committee Activity:

Local Government: 3/21/23, 3/24/23 [DPA], 2/14/24, 2/20/24 [DPA].
Finance: 3/30/23, 3/31/23 [DPA(LG)].

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

- 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 to be used for providing affordable or workforce housing, supportive housing services, rental assistance, or assisting the operations of organizations dedicated to providing services and assistance related to attaining and maintaining housing.
- Exempts owner-occupied dwellings in which all rented rooms share a common entryway from the tax.
- Requires a county or city imposing the tax to publish an annual reporting detailing how the tax was spent in the prior year.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 4 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Berg and Riccelli.

Minority Report: Do not pass. Signed by 2 members: Representatives Jacobsen, Assistant Ranking Minority Member; Griffey.

Minority Report: Without recommendation. Signed by 1 member: Representative Goehner, Ranking Minority Member.

Staff: Kellen Wright (786-7134).

Background:

Lodging Taxes.
A sales tax is a tax applied to the sale, rental, repair, or installation of tangible personal 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 subject to tax, 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 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.

Counties and cities can also impose up to two separate excise taxes on the sale of short-term lodging. With some exceptions, revenue from these taxes must be used for tourism-related purposes. An excise tax is a tax imposed on a specific good or activity. For example, the sale of real estate is subject to an excise tax, as is the privilege to use an aircraft in the state.

The first excise tax applicable to the sale of lodging 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 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.

Outside of Seattle, the imposition of the tax on lodging, when taken together with all other taxes applicable to lodging, including sales taxes with one exception, cannot exceed a total rate of 12 percent. 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 second lodging 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 the sale 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.

<u>Short-Term Rentals and Short-Term Rental Platforms</u>.
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 rental operator is a person who receives payment from owning or operating a dwelling unit as a short-term rental. A short-term platform is a company that financially benefits from providing a means through which operators can offer dwelling units for short-term rental.

Summary of Amended Bill:

The legislative authority of a county or city may impose an excise tax on the sale of short-term rental lodging made 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 throughout the county, while a city may impose the tax within the city. If a county and city impose the tax on the same transaction, the county must allow a credit against its tax for the full amount of the city tax. The Department of Revenue must collect the tax on the behalf of a county or city imposing the tax at no cost to the county or city.

The excise tax does not apply to the renting of a room in a dwelling unit that is the owner's primary residence and in which all rented rooms share a common entryway. A short-term rental platform that is collecting and remitting taxes on behalf of an owner must provide a means for an owner to attest that they meet the criteria for this exemption. The short-term rental platform must notify the county or city imposing the tax when an exemption applies. If notified by the county or city that the exemption does not apply, the short-term rental platform must collect and remit the excise tax.

Revenue from the tax must be deposited into a separate fund, and used exclusively for:
- acquiring, rehabilitating, or constructing affordable or workforce housing, or facilities providing supportive housing services;
- funding operation or maintenance costs of affordable, workforce, or supportive housing;
- providing rental assistance to tenants; or
- funding the operations of social service and non-profit organizations that are dedicated to providing services and assistance related to attaining and maintaining housing including, but not limited to, employment, utilities, nutrition, and childcare assistance.

A county or city imposing the tax may enter into an interlocal agreement with another county or city to jointly undertake a qualifying project.

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.

A county or city imposing the tax must publish an annual report by March 1 of each year detailing how revenue from the tax was spent in the prior year. This report must be available to the public, and this may include posting the report on the county's or city's website.

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.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill:

- allows a county to impose the special excise tax throughout the county;
- removes authorization for a local government to exempt up to one short-term rental per operator from the special excise tax based on age and/or income, and instead provides for an exemption from the special excise tax for the furnishing of a room for lodging in an owner-occupied dwelling unit in which all rented rooms share a common entryway;
- requires an owner that wishes to qualify for the exemption to provide an attestation that the conditions of the exemption are met to a short-term rental platform, if the short-term rental platform collects and remits taxes on the owners behalf;
- requires a short-term rental platform collecting and remitting taxes on an owner's behalf to notify the local government if an exemption is being applied, and to begin collecting and remitting the tax if told by a local government that the exemption does not apply;
- requires moneys from the tax to be kept in a separate fund and used exclusively for acquiring, rehabilitating, or constructing affordable or workforce housing, or facilities providing supportive housing services; operations and maintenance funding for such housing; rental assistance to tenants; or funding the operations of organizations dedicated to providing services and assistance related to attaining and maintaining housing;
- codifies section 1 of the act in chapter 82.14 RCW, instead of chapter 67.28 RCW;
- requires the Department of Revenue to collect the tax at no cost to the county or city imposing the tax; and
- requires a local government imposing the tax to publish an annual report detailing how the revenue from the tax was used in the prior year.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) We are currently in a housing crisis throughout the state. One factor exacerbating the crisis is that offering a home for short-term rental is more advantageous than putting a home on the market for homeownership. This supports tourism and travel, but makes it difficult for service workers in those communities to find housing. This is especially true in tourism-dependent communities, where they face unique challenges because of isolation and higher property costs due to tourism. San Juan Island illustrates the issue, since there is limited land available for housing, and 8 percent of the housing stock is being offered for short-term rental. This impacts teachers, firefighters, and medical personnel, and commuting is not an option for those on islands. Another place with unique difficult short-term rentals is Leavenworth, where the community has to compete with its own beauty and those who want second homes there. The average home costs over $700,000, and is beyond the reach of wage earners who are the backbone of the community. Currently, 40 percent of the housing stock is second homes, which is not sustainable or healthy for the community or the environment, and it forces dependence on commuters. These communities should not just be hamlets for second homes for those with high incomes. Washington needs more units on the market and more resources for local governments, and this bill addresses both issues. Local governments need tools like this bill to try and remain an active, working community. This bill will create a funding stream to allow communities to be maintained. This will give local governments additional tools and incentives to meet their local housing targets, and aligns with the commitment to assist with affordable housing, particularly for those at 50 percent area median income or below. For a lot of local housing operators, it is difficult to get operating capital to use for people in the community. This bill can be used to fund local partnerships. The revenue from the tax in this bill would probably be segregated into a separate fund and potentially used in conjunction with an advisory committee. This bill has been worked on closely with cities and with short-term rental platforms to make sure it can be implemented and will help get people into housing and services. We want to make sure that vacation rentals have a positive cultural and revenue impact. The tax in this bill is not the complete solution, but it can help to strike a healthy balance between housing and tourism. Homeowners are invested in their communities, so we should work with them cooperatively rather than punitively. It is an excellent strategy to use the tourist economy that has helped to eliminate affordable housing options, to build it back.

(Opposed) There are many different types of short-term rental hosts. Many people need short-term rental income to be able to afford to live in Seattle and to pay for the high cost of childcare. It can also allow people to rent a portion of a home rather than needing to downsize. We rely heavily on the tourism industry, and the guests that come help to support small businesses. There is no discussion about how the revenue from the tax will be used. This tax will not get at the core issue of affordable housing, which is how many new units are being created.

(Other) While expanding efforts to provide affordable housing are good, this bill risks limiting an income stream that many owners use to meet costs. Short-term rentals allow homeowners to supplement income, and most hosts are not investors or conglomerates, but those trying to augment their income to be able to afford rising costs of living and inflation. This tax would make it difficult for hosts to keep up with rising costs, and would make short-term rentals less attractive to visitors as compared to other options like hotels. This bill should be amended to align with plans that counties are required to create to address housing needs. Every community in the state has this kind of plan, and counties are charged with executing them. Other taxes are aligned to these plans, and the revenue from this tax should have to be spent in accordance with the existing plans as well. Counties should also be able to levy the tax if a city does not, but this bill currently only allows counties to levy the tax in unincorporated areas.

Persons Testifying: (In support) Senator Liz Lovelett, prime sponsor; Carl Florea, City of Leavenworth; Salim Nice, City of Mercer Island; Brent Ludeman; Zeke Reister, Leavenworth City Council; and Carl Schroeder, Association of Washington Cities.

(Opposed) Carolyn Allen; Matthew Ford; and Ken Ploeger, Airbnb Seattle Hosts.

(Other) Curtis Steinhauer, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.