

FINAL BILL REPORT

HB 2698

C 35 L 98

Synopsis as Enacted

Brief Description: Resolving conflicts in lodging tax statutes enacted in 1997.

Sponsors: Representatives B. Thomas, Dunshee, Wensman, Gardner and Ballasiotes; by request of Governor Locke.

Senate Committee on Government Operations

Background: 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 also is imposed on lodging charges. Therefore, the total amount of tax paid by the consumer was not increased as a result of this tax. The Legislature amended the hotel-motel tax statutes several times to allow other municipalities (counties, cities, and towns) to impose hotel-motel taxes, first in 1970 to include the cities of Tacoma and Spokane. In 1973, all municipalities were included, except in King and Yakima counties only Bellevue and the City of Yakima were allowed to impose these taxes. The Legislature also expanded allowable uses of hotel-motel tax revenue several times to include convention center facilities, performing arts facilities, visual arts center facilities, and promotion of tourism. Some municipalities were granted specific authorizations to use the revenue for particular purposes, such as tall ship tourist attractions, ocean beach boardwalks, and public restrooms.

Some municipalities were authorized to impose additional hotel-motel taxes. These authorizations were known as "special" hotel-motel taxes, and generally were limited to narrowly-defined geographic descriptions that included only one or two cities or a county. The original 2 percent hotel-motel tax authorization became known as the "basic" hotel-motel tax. Only the basic hotel-motel tax was credited against the state sales tax. Additional special taxes were added to lodging bills and paid by the consumer. As of the beginning of the 1997 legislative session, the total rates authorizations for hotel-motel taxes, including the basic tax, were as follows:

Two percent total (credited against the state sales tax):

All counties and all cities outside King and Yakima counties, other than those with higher rates listed below.

Four percent total (with first 2 percent credited against the state sales tax):

Cowlitz County, East Wenatchee, Kennewick (not yet imposed), La Conner, Pasco, Richland (not yet imposed), Snohomish County, Spokane County (including 2 percent by a public facility district), and Wenatchee.

Five percent total (with first 2 percent credited against the state sales tax):

Bellevue, Chelan (imposed only 4 percent), Grays Harbor County, Leavenworth (imposed only 3 percent), Long Beach, Ocean Shores, Westport, Winthrop, and Yakima City.

Seven percent total (with first 2 percent credited against the state sales tax):

Pierce County and the cities in Pierce County. (Only the county, Buckley, Eatonville, Fife, Lakewood, Puyallup, and Tacoma imposed a tax, and only at 4 percent, until June 1997, when Lakewood increased its rate to 7 percent. Tacoma also imposed a 7 percent rate effective September 1, 1997.)

During the 1997 legislative session, the Legislature passed Substitute Senate Bill 5867 which made hotel-motel tax rates more uniform, expanded the allowable uses of revenue to all include all tourism-related facilities and a broader definition of tourism promotion, and required creation of lodging tax advisory committees in municipalities with populations of 5,000 or more. The act provided a 4 percent total hotel-motel tax rate authorization for most municipalities, with 2 percent credited against the state sales tax. The separate "basic" 2 percent tax and separate special taxes for particular municipalities were eliminated. However, municipalities with authorized hotel-motel tax rates totaling more than 4 percent were allowed to continue those rates under the new statute. The combined rate of state and local sales taxes and hotel-motel taxes was limited to 12 percent, except in Seattle and Bellevue, where total rates in excess of 12 percent were continued. Although the act was passed in the 1997 session, the effective date was delayed until April 1, 1998.

After the close of the session, the Governor vetoed two sections of SSB 5867. The veto message stated that one section conflicted with legislation authorizing a football stadium, Engrossed Substitute House Bill 2192, and that the section with the delayed effective date was "unnecessary." The veto of these two sections interacted in a complex manner unintended by the Governor. The hotel-motel tax rate for several municipalities was reduced, while the maximum hotel-motel tax rate for other municipalities was increased, and several complex questions of legal interpretation were raised. Without the delayed effective date, the act took effect 90 days after the end of the session, which was July 27, 1997.

The partial veto reduced the statutorily authorized hotel-motel rates for Bellevue, Ocean Shores, and Westport from 5 percent to 2 percent. Yakima was reduced from 5 percent to 4 percent. Tacoma, Buckley, Eatonville, Fife, and Puyallup were reduced from 4 percent to 2 percent. Lakewood was reduced from 7 percent to 2

percent. Bellevue and Yakima City also lost the authority to credit their taxes against the state sales tax.

The Thurston County Superior Court enjoined enforcement of the partially vetoed version of SSB 5867 with respect to the cities of Bellevue, Yakima, Ocean Shores, Tacoma, Westport, Fife, and Lakewood. The court found that these cities had entered into contracts or issued bonds that relied on hotel-motel taxes, and reducing the rate of those taxes would be an unconstitutional impairment of contract. The court allowed these cities to continue collecting hotel-motel taxes at pre-veto rates until May 15, 1998, giving the Legislature time to respond to the problems caused by the partial veto. The court indicated it would consider the case further after that date if the Legislature did not act.

The partial veto also increased the maximum hotel-motel tax rate for some municipalities. The partial veto left both the original 2 percent "basic" tax and the new 4 percent authorizations intact in separate sections. As a result, the partial veto increased the total hotel-motel tax authority of many municipalities to 6 percent. Wenatchee and East Wenatchee imposed hotel-motel taxes totaling 6 percent in September and October, respectively. No other municipalities had relied on this aspect of the partial veto as of January 1, 1998.

Summary: Hotel-motel statutes are amended in a manner that resolves the conflicts between two bills enacted during the 1997 session, SSB 5867 dealing with hotel-motel taxes, and ESHB 2192 authorizing a football stadium. The issues raised by the Governor's partial veto of SSB 5867 are addressed. The "basic" hotel-motel authorization of 2 percent, which was preserved by the Governor's veto, is not amended in this act. Instead, the 4 percent authorization provided by SSB 5867 is reduced to 2 percent. The result is a total hotel-motel tax authorization of 4 percent for most municipalities, the same as under SSB 5867 as passed by the Legislature in 1997. Higher hotel-motel rate authorizations existing before the partial veto are restored, retroactive to the date of the veto. However, these higher rate authorizations expire if not imposed by January 1, 1999. Hotel-motel taxes collected during the period between the partial veto and the effective date of this act are validated retroactively, to the extent the tax rates are consistent with this act.

The opportunity created by the partial veto for 6 percent total hotel-motel tax rates is preserved for those municipalities that took advantage of this opportunity before January 1, 1998 (Wenatchee and East Wenatchee).

The requirements for a hotel advisory committee in municipalities with a population of 5,000 or more are clarified. The requirements apply to both the "basic" tax and any additional tax, but only when a new tax is imposed, the rate is increased, an exemption is repealed, or the use of revenue is changed.

Votes on Final Passage:

House 92 3

Senate 47 0

Effective: March 12, 1998