Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 2156

Brief Description: Relating to promoting the fiscal sustainability of cities and counties.

Sponsors: Representatives Reykdal, Carlyle and Tharinger.

Brief Summary of Bill

- Establishes legislative intent to promote the fiscal sustainability of cities and counties.

Hearing Date: 4/17/15

Staff: Jeffrey Mitchell (786-7139).

Background:

Liquor Fee Revenue Distributions.
Initiative 1183 (I-1183), which was approved by the voters in November 2011, privatized the purchase, distribution, and sale of liquor. Prior to I-1183, the Washington State Liquor Control Board (WSLCB) handled the purchase, distribution, and sale of liquor through a state-owned distribution center, state-owned stores and certain contract stores.

Under the pre-I-1183 system, the liquor was marked-up and taxed prior to sale. A portion of the mark-up supported the operation of the state retail liquor stores. The excess profits from sales were deposited into the Liquor Revolving Fund (Fund) and excess funds were distributed by a statutory formula:

- three-tenths of 1 percent to border areas;
- 50 percent to the state;
- 10 percent to the counties; and
- 40 percent to incorporated cities and towns.

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.

I-1183 eliminated state collection of liquor profits and instead created two license fees. One fee is paid by distributors and one is paid by retailers. All licensure fees are deposited into the Fund.

I-1183 specified that amounts distributed from the Fund to border areas, counties, cities, towns, and the municipal research center must be made in a manner that provides each category of recipient an amount that is no less than that received from liquor profits in the Fund during comparable periods prior to December 8, 2011, plus an additional $10 million distributed from the Fund for public safety.

Since Fiscal Year 2013, distributions from the Fund to these local governments are no longer based on a statutory formula but rather a fixed amount based on distributions during a comparable period prior to December 8, 2011, plus the $10 million specified in the initiative. Any amounts remaining in the Fund after these distributions are deposited into the State General Fund. The total fixed amount is $49.4 million per year.

Local Utility Taxes.
Washington counties provide regional services to all residents within their jurisdiction, including administering elections and furnishing judicial services, and providing a broader array of services to residents in unincorporated areas.

Although counties are authorized by statute to impose a variety of taxes and fees, the two primary sources of county tax revenues are general property taxes, and retail sales and use taxes. According to the Local Government Fiscal Reporting System of the State Auditor (LGFRS), 38.03 percent of $7.41 billion in total revenues received by counties in 2013 were from general property taxes and retail sales and use taxes.

In addition to having property tax and retail sales and use tax authorizations, Washington cities may also impose certain business taxes, including business and occupation taxes on utilities (utility taxes). These utility taxes may be levied on the gross operating revenues of: (1) private utilities from operations within the boundaries of a city; and (2) a city's own municipal utilities. Utilities that may be subject to city utility taxes include electricity, water, sewer, stormwater, gas, telephone, cable television service, and steam.

Most Washington cities impose utility taxes. With certain exceptions for water, sewer, and stormwater utilities, the maximum utility tax rate that cities may impose without voter approval is 6 percent. Higher rates may be levied with voter approvals. According to 2013 data from LGFRS, cities imposed $747.3 million in utility taxes in 2013.

Nuisance Abatement.
"Nuisance" is defined in statute as unlawfully doing an act, or omitting to perform a duty, which:

- annoys, injures, or endangers the comfort, repose, health, or safety of others;
- offends decency;
- unlawfully interferes with, obstructs, or renders dangerous for passage a lake, navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or
- in any way renders other persons insecure in life or in the use of property.

A public nuisance is a nuisance that affects equally the rights of an entire community or neighborhood. Statutes further define other types of nuisances and provide civil and criminal remedies and penalties for nuisances.

All cities and towns are authorized to declare what is deemed a nuisance and to abate the nuisance. Various statutes provide the following:

- first class cities are authorized to declare and define a nuisance, abate any nuisance, and impose fines upon persons creating, continuing, or allowing nuisances;
- second class cities are authorized to declare and define a nuisance, prevent or abate nuisances at the expense of the party creating or maintaining the nuisance, and levy a special assessment against premises where the nuisance is located to recover abatement costs;
- code cities are granted by reference the same authority as other cities to declare and define nuisances and to abate nuisances;
- towns may declare by ordinance what is deemed a nuisance and may exercise all remedies provided by law for preventing and abating nuisances.

Additionally, any city or town may by general ordinance require property owners: (a) to remove all or part of trees or vegetation that have died or that impair the use of sidewalks or streets; and (b) to remove debris on their property that is a fire hazard or menace to public health, safety, or welfare. Cities and towns are authorized to provide for removal of such items and to charge the property owner for the cost of removal. The charge is a lien against the property, and may be enforced and foreclosed in the manner provided by law for liens for labor and materials.

All cities and towns are authorized by statute to adopt ordinances relating to dwellings, buildings, structures, or premises that are unfit for human habitation or other uses due to: dilapidation; disrepair; structural defects; defects increasing the hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; or other conditions that are inimical to the health and welfare of the community.

Under certain circumstances, a city or town may repair, close, remove, or demolish a dwelling, building, structure, or premises found to be unfit for use or habitation. The amount of the cost to take such action may be assessed against the real property. The assessment constitutes a lien against the property of equal rank with tax liens. If left unpaid, the amount of the assessment may be entered by the county treasurer upon the property tax rolls and collected at the same time as general taxes.

A mechanics' lien is a lien on property for the contract price of labor, professional services, materials, or equipment that was furnished for the improvement of real property. The lien is prior to any lien, mortgage, deed of trust, or other encumbrance that attaches after the mechanics' lien attaches, or that was unrecorded at the time labor, services, materials, or equipment included in the mechanics' lien was first furnished.

A mechanics' lien must be recorded not later than 90 days after the person claiming a lien ceases to furnish labor, services, materials, or equipment or the last date that employee benefit contributions were due. From the time that a mechanics' lien is recorded, the lien generally attaches to the property for a period of eight months. A mechanics' lien may be foreclosed and

enforced by civil action in the manner prescribed for judicial foreclosure of a mortgage.
Collection of Special Assessments by County Treasurer.

A local government may contract with the county treasurer for collection of special assessments, excise taxes, rates, or charges imposed by the local government. If a contract is entered into, notice of special assessments, excise taxes, rates, or charges may be: (a) included on the notice of property taxes due; (b) included on a separate notice mailed with the notice of property taxes due; or (c) sent separately from the notice of property taxes due. County treasurers may impose an annual fee for collecting amounts on behalf of local governments, not to exceed 1 percent of the value of the special assessments, excise taxes, rates, or charges collected.

Public Records Requests.
The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

An agency generally may not ask a requestor for the purpose of the request, except to determine whether the information is exempted from disclosure. For example, an agency may not provide access to lists of persons that are requested for commercial purposes, unless otherwise specifically authorized by law.

An agency may not charge a fee for locating and making records available for inspection. However, an agency may charge for the actual cost of copying the records up to 15 cents per page. Costs directly related to copying may be included, such as the labor for making copies and shipping costs, but general administrative and overhead costs are excluded. The agency may require a deposit up to 10 percent of the estimated actual copy costs for a request.

Public Employees' Benefits Board Health Care Program.
The Health Care Authority (HCA) administers benefits plans, forms benefits contracts, develops participation rules, and through the Public Employees' Benefit Board (PEBB) approves schedules of rates and premiums for active employee and retired participants. The members of the PEBB vote to approve contracts and benefits for the PEBB program.

The PEBB program primarily covers employees and retirees of state agencies and state higher education institutions, and the retirees of school districts and educational service districts. Active employees and pre-Medicare retirees participate in a single medical risk pool, so that the cost of claims, insurance, and risk are shared amongst all employers and employees that participate. Retirees eligible for Medicare participate in a separate risk pool; however, employer cost sharing is significantly different. Medicare absorbs the majority of medical expenses for this group, and other insurance costs are limited by a maximum per person retiree cost established in the state biennial operating budget. Currently, this "explicit" Medicare-eligible retiree subsidy is set at $150 per Medicare-eligible participant per month.

Subject to the approval of the HCA, the PEBB may also cover employees of a county, municipality, or other political subdivision of the state, as well as employees of a tribal government, and the Washington Health Benefit Exchange. Currently, in addition to the approximately 108,000 employee subscribers that participate in the PEBB from state agencies

and higher education institutions, about 2,000 school district employees and about 12,000 other local government employees participate in the PEBB.

For a county or other non-state governmental entity to join the PEBB system, a contract must be negotiated with the HCA and receive HCA approval; the HCA has the sole right to reject the application to join the PEBB.

Funding for Cultural Access Programs.
The state levies a tax on the retail sale of tangible personal property, digital goods, and certain services within the state. A taxable retail sale also includes the installation, repair, alteration, or improvement made to a consumer's personal property. If a retail sales tax is not collected on the property or services at the time of sale to the consumer, then a separate tax is imposed on the value of the property or services used within the state. The state sales and use tax rate is 6.5 percent. Counties and cities are authorized to impose an additional sales and use tax at a lesser rate than the state rate.

All real and personal property in the state is subject to the state property tax, unless specifically exempted under law. Property taxes are based on the assessed value of the property. The state Constitution limits regular property tax levies to a maximum of 1 percent of a property's assessed value. This applies to the total taxes levied by the state, counties, and other districts.

To keep the total tax rate within the 1 percent limit, the Legislature has established individual and aggregate limits for the various tax districts. The tax levy maximum assessed by the state is set at $3.60 per $1,000 of assessed value. The state levy takes precedence over all other levies.

Most of the remaining local tax districts must share an overall maximum rate of $5.90 per $1,000 of assessed value. These districts are further stratified into senior and junior taxing districts, each with their own specific rate limits. If the total tax levy exceeds the $5.90 maximum rate, then senior taxing districts take preference over junior taxing districts in fulfilling their individual rates. The junior taxing rates are prorated or eliminated in a preferential order set by statutory schedule.

County Mental Health/Chemical Dependency Sales and Use Tax.
A county mental health/chemical dependency sales and use tax of 0.1 percent was authorized in 2005. In 2010 cities within a county of more than 800,000 were also authorized to impose the tax if the county was not imposing the tax by January 1, 2011. The proceeds of the tax must be devoted to county mental health treatment, chemical dependency, and therapeutic court programs and services. The sales and use tax has been imposed in 20 counties: Clallam, Clark, Cowlitz, Ferry, Grays Harbor, Island, Jefferson, King, Lewis, Mason, Okanogan, San Juan, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Walla Walla, and Whatcom. The city of Tacoma also imposes the tax. Total tax collections in 2013 for all counties and cities imposing the mental health/chemical dependency sales and use tax were approximately $94 million.

Until calendar 2010, tax receipts could not supplant (replace) existing funds being used for these programs and services. This non-supplant restriction was temporarily suspended in 2010, allowing counties and cities to redirect an amount equal to 50 percent of the tax to other uses in calendar year 2010 and then reduced by 10 percent for the following four years.

In 2011 the non-supplant restriction was again extended and modified as follows:

Year	Amount of Revenue That May Be Supplanted	
	Counties with population > 25,000 and cities with population > 30,000	Counties with population < 25,000
2011	Up to 50%	Up to 80%
2012	Up to 50%	Up to 80%
2013	Up to 40%	Up to 60%
2014	Up to 30%	Up to 40%
2015	Up to 20%	Up to 20%
2016	Up to 10%	Up to 10%

Also in 2011, revenues used to support the cost of a judicial officer and support staff of a therapeutic court were exempted from supplant restrictions.

In 2012, a county with a population larger than 25,000 and a city with a population over 30,000 was authorized to use up to 50 percent of the mental health/chemical dependency sales and use tax to supplant existing funds in the first three calendar years in which the tax is imposed. Up to 25 percent may be used to supplant existing funds in the fourth and fifth years in which the tax is imposed. This new supplant timeline applies to jurisdictions imposing the tax after December 31, 2011.

Annexation Sales and Use Tax.
In 2004 the Legislature directed the Department of Community, Trade and Economic Development (now known as the Department of Commerce) to study the progress of annexation and incorporation in six urban counties, and to identify barriers and incentives to fully achieving annexation or incorporation of urban growth areas in those counties. Lack of funding for municipal services during the transition period following annexation was one of the barriers identified by cities.

Legislation adopted in 2006 authorized qualifying cities to impose a sales and use tax to provide, maintain, and operate municipal services, a term defined to mean services customarily provided to the public by a city, in a newly annexed areas. Provisions governing the annexation sales and use tax (tax), which is a credit against the state sales tax and not an additional tax to a consumer, were amended in 2009 and 2011.

There are numerous requirements that a city must meet before it may impose the tax. For example, the city must:

- be located in a county with more than 600,000 persons;
- annex an area that is consistent with the comprehensive plan adopted by the city in conformity with the Growth Management Act;
- commence annexation of a qualifying area using direct petition or election annexation methods prior to January 1, 2015; and
- adopt an ordinance or resolution stating that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the area on an annual basis.

All revenue from the tax must be used to provide, maintain, and operate municipal services for the annexation area, an area for which an annexation has been completed. The revenues, which are collected by the Department of Revenue (Department) and remitted to the city, may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area, and the general revenues that the city would otherwise expect to receive from the annexation in a year. If the revenues from the tax and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the tax distributions must be suspended for the remainder of the year. Additionally, the tax may continue for no more than 10 years from the date that each increment of the tax is first imposed.

On December 4, 2008, the cities of Burien and Seattle reached an agreement regarding the annexation of an unincorporated area located between the two cities. This area is referred to as the North Highline area. The population within this area is approximately 33,000. The City of Seattle will annex a portion of the area with a population around 20,000. The City of Burien has already annexed the remainder of the area.

With limited exceptions, the rate of the tax is 0.1 percent for each annexed area with a population greater than 10,000, but less than 20,000, and 0.2 percent for an annexed area with more than 20,000 persons. Additionally, in 2011 the City of Seattle was allowed to impose the annexation sales and use tax at a rate of 0.85 percent; however, the total amount of revenue from the tax was limited to $5 million per fiscal year.

A county public safety sales and use tax was authorized in 2003. Subject to voter approval, counties may impose a tax of 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. The sales and use tax has been implemented in 10 counties: Cowlitz, Franklin, Mason, Okanogan, Jefferson, Kittitas, Walla Walla, Spokane, Whatcom, and Yakima.

Cities are also authorized to 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. Fifteen cities are currently imposing the tax.

Summary of Bill:

The legislature intends to enact legislation promoting the fiscal sustainability of cities and counties.

Appropriation: None.

Fiscal Note: Requested on April 13, 2015.

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