

HOUSE BILL REPORT

ESHB 2156

As Passed House:
June 30, 2015

Title: An act relating to promoting the fiscal sustainability of cities and counties.

Brief Description: Promoting the fiscal sustainability of cities and counties.

Sponsors: House Committee on Finance (originally sponsored by Representatives Reykdal, Carlyle and Tharinger).

Brief History:

Committee Activity:

Finance: 4/17/15, 6/8/15 [DPS].

Third Special Session

Floor Activity:

Passed House: 6/30/15, 74-24.

Brief Summary of Engrossed Substitute Bill

- Authorizes a city or town to levy a special assessment on land or premises where a nuisance is situated to reimburse the city or town for the expense of abatement.
- Allows agencies to assess a cost recovery fee for the actual cost of providing a public record if the request is primarily for a commercial purposes.
- Permits counties and political subdivisions with fewer than 5,000 employees to apply for and join the Public Employees' Benefits Board (PEBB) health care program without being subject to rejection by the Health Care Authority (HCA) and authorizes the HCA to develop charges to offset significant increases in insurance rates that could be caused by the participation of non-state employers in the PEBB.
- Modifies the annexation sales and use tax that may be imposed by the City of Seattle.

HOUSE COMMITTEE ON FINANCE

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Fitzgibbon, Pollet, Reykdal, Robinson, Ryu, Springer, Stokesbary, Wilcox and Wylie.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Assistant Ranking Minority Member; Condotta and Vick.

Staff: Jeffrey Mitchell (786-7139).

Background:

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 to: (a) remove all or part of trees or vegetation that have died or that impair the use of sidewalks or streets; and (b) 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.

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.

A local agency may charge a fee for providing public records that are requested for a commercial purpose. A commercial purpose is defined as a record requested by or on behalf of a for-profit business for direct sale or resale, or for obtaining information from the record that is used for sale, facilitating a profit, or increasing business opportunities. A commercial purpose specifically does not include requests for records used by a news media outlet to broadly disseminate information on matters of public interest or requests for records for use in any judicial or quasi-judicial proceeding.

The fee assessed for a commercial purpose request may not exceed a reasonable estimate of the actual cost of locating, producing, inspecting, redacting, and copying the records for the requestor. A local agency may require a requestor to declare whether a request is for a

commercial purpose and may recover its cost from any party who intentionally misrepresents the purpose of the request to the agency. A party may seek judicial review of the fee assessed by a local agency for a commercial purpose request.

A local agency is authorized to establish regulations establishing a priority for promptly fulfilling non-commercial purpose requests ahead of commercial purpose requests. A local agency may enter into an agreement with a requestor to fulfill regular periodic requests, which may include an alternative arrangement to the fee authorized for commercial purpose requests.

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.

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 Engrossed Substitute Bill:

Nuisance Abatement.

Cities and towns that exercise authority under applicable statutes or other law to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance are authorized to levy a special assessment on property where a nuisance is situated. The special assessment is for the purpose of reimbursing the city or town for the expense of abatement. The first \$2,000 of the special assessment levied by the city or town is a lien that has equal rank with state, county, and municipal taxes.

Cities and towns that choose to abate a nuisance or levy a special assessment must send notice by regular mail as follows: Before a city or town abates a nuisance, notice must be provided to the property owner that: (a) abatement is pending; and (b) a special assessment may be levied on the property.

Before a special assessment is levied, notice must be provided to the property owner and any identifiable mortgage holder: (a) that a special assessment will be levied on the property; and (b) the estimated amount of the special assessment.

Cities and towns levying a special assessment for nuisance abatement may contract with the county treasurer to collect the special assessment in accordance with applicable statute.

Public Records Requests.

A local agency may charge a fee for providing public records that are requested for a commercial purpose. A commercial purpose is defined as a record requested by or on behalf of a for-profit business for direct sale or resale, or for obtaining information from the record that is used for sale, facilitating a profit, or increasing business opportunities. A commercial purpose specifically does not include requests for records used by a news media outlet to broadly disseminate information on matters of public interest or requests for records for use in any judicial or quasi-judicial proceeding.

The fee assessed for a commercial purpose request may not exceed a reasonable estimate of the actual cost of locating, producing, inspecting, redacting, and copying the records for the requestor. A local agency may require a requestor to declare whether a request is for a commercial purpose and may recover its cost from any party who intentionally misrepresents the purpose of the request to the agency. A party may seek judicial review of the fee assessed by a local agency for a commercial purpose request.

A local agency is authorized to establish regulations establishing a priority for promptly fulfilling non-commercial purpose requests ahead of commercial purpose requests. A local agency may enter into an agreement with a requestor to fulfill regular periodic requests, which may include an alternative arrangement to the fee authorized for commercial purpose requests.

A request that is exempt from the cost recovery fee is not also exempt from the copying fee that is applicable to all records requests.

Public Employees' Benefits Board Health Care Program.

Counties and political subdivisions with fewer than 5,000 employees may join the PEBB health care program upon completion of an application to contract for coverage with the HCA. If the participation of a non-state employer in the PEBB significantly increases insurance rates for state employees, the HCA is authorized to develop a charge for municipalities and tribal governments to offset the increase.

Annexation Sales and Use Tax.

The \$5 million per year cap for the City of Seattle is increased to \$8 million; however, the time period in which the annexation sales and use tax can be imposed by Seattle is decreased from 10 years to six years. The bill disallows the City of Seattle from imposing the tax unless the annexation is approved by the voters. Also, the city may not impose the tax if the city takes over the provision of sewer services.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect on August 1, 2015.

Staff Summary of Public Testimony:

(In support) Utility tax. The county revenue system is inequitable compared to state government and other local governments. Passing this section of the bill would restore equity to county tax system by giving counties the same tools that state and other local governments already have. The bill is carefully crafted to ensure that the new tax will not be overly burdensome. The county legislative authority may determine whether to impose tax, choose a rate up to 6 percent, and identify which utility and what types of businesses will be taxed. The cap at \$150,000 per year per entity also ensures that the measure will not be overly burdensome. The Washington State Association of Counties suggested that it is not the intent to impose the tax where cities are already imposing it, and the bill needs to be amended to make that clear. Counties also think that the Puget Sound Energy request for notice to taxpayers is reasonable and should be included in the bill.

Public Safety Local Option Sales Tax. Ten counties have passed this tax, but 29 have not. Counties appreciate this option to allow for a 0.1 percent increase that would be councilmantic, or 0.2 percent increase by vote of the people. Counties have struggled to keep up with rising cost of providing public safety services, while main source of revenues,

property taxes, are limited at 1 percent of new construction. A councilmatic option will help counties raise viable public safety resources.

Public records. Public records requests are a consistent cost-driver. This bill would help reform what is currently a taxpayer-subsidized system whereby corporations are asking for records and making money on them. Local governments want to focus their resources on requests coming from citizens.

PEBB. This option would give local governments, especially small counties, a way to shop for affordable rates for health care. Currently, the HCA has a system for school employees, in which the surcharge is absorbed by the school employees so there is no impact to the State General Fund.

Mental Illness/Drug Dependency Local Sales Tax. Though this is largely a state function or responsibility, King County appreciates can additional tool that would allow them to respond to a mental health crisis.

Annexation sales tax credit. King County supports this. If Seattle is going to annex North Highline, this would give them the financial tools necessary to make that happen.

Liquor. Previously, local governments were allowed their share of the liquor revolving fund, and they would like this funding restored.

Nuisance Abatement. This bill does not change how city declare nuisances, or the due process for declaring a nuisance. It is simply a tool to allow cities to recover costs. Average cost to abate a nuisance is \$4,700. Under a suggested change to the bill, the city would recover \$2,000 as a high priority lien with remainder as low-priority lien.

(With concerns) There are concerns that this bill will not actually give local governments the fiscal tools they need. In particular, the 1 percent cap on property taxes is not included. Additionally, there are other local options that are not currently utilized, leading to the question of whether local governments need more options.

(Opposed) Public Utility. Several opponents testified that taxes on utilities, which are a necessity, are regressive. Puget Sound Energy testified that the language is very confusing, because it implies that the tax would apply to incorporated and unincorporated areas. It should be changed to apply to unincorporated areas only. Language for taxpayer notification needs to be included. A limit of \$12,500 per month may limit exposure to the tax for utility companies, but there is a concern that the limit will eventually be labeled a tax break. There is a limited nexus between the public utility tax and services that counties provide (i.e., public safety). Taxes like this will lead to a tax shift from utility to customer, resulting in increased costs to residents and businesses. Small retailers will pass this tax to their customers, increasing the regressivity of the tax. There should be voter approval of this type of tax. Large retailers with multiple stores in jurisdictions will pay tax multiple times leading to a compounding effect. Additionally, state and local utility taxes on telecom and broadband in Washington are ranked the highest one in the country.

Public Records. This legislation will impose burdens on companies that provide information to citizens. Records held by local governments are commercial records; records kept for commercial purposes should be given out for commercial purposes as well. The current draft defines commercial purposes too broadly, because it could be interpreted as any record that is used in some way in any aspect of business. Specific stakeholders had examples of ways that this information is used that are beneficial to citizens: Auto stores use this data to stock appropriate inventory, and newspapers use the records requests to provide information and government oversight and transparency to citizens. Some suggestions to improve the burdens on local governments in this area include requiring the State Auditor to develop a comprehensive solution to better records management practices, and allowing local governments to increase fees for records as long as they are at a reasonable level, with the caveat that such fees will likely be passed on to customers and clients.

Nuisance Abatement. If the legislation is changed to limit the superior lien to \$2,000, then community bankers would be neutral on this bill.

Persons Testifying: (In support) Dave Sauter, Klickitat County; Bud Blake, Thurston County; Josh Weiss, Washington State Association of Counties; Blake Dively, King County; Dave Williams, Association of Washington Cities; Brianna Taylor, City of Spokane Valley; and Doug Levy, Cities of Everett, Kent, Puyallup, Redmond, and Issaquah.

(With concerns) David Brown, Cultural Access Washington; and Holly Chisa, Northwest Grocery Association.

(Opposed) Kim Clauson, Puget Sound Energy; Kent Lopez, Washington Rural Electric Cooperative Association; Tim Boyd, Industrial Customers of Northwest Utilities; Jeff Johnson, Regional Water Cooperative of Pierce County; Rowland Thompson, Allied Daily Newspaper of Washington; Joanie Deutsch, Washington Retail Association; Brad Tower, Community Bankers of Washington; Ron Main, Broadband Communications Association; Bill Clarke, Washington Public Utilities Districts Association; Diana Carlen, Redd Elsevier, Lexis Nexis; Amber Carter, Association of Washington Business; Bill Stauffacher, Northwest Pulp and Paper Association; Joe Daniels, Washington State Association of Sewer and Water Districts; and Cliff Webster, Consumer Data Industry Association.

Persons Signed In To Testify But Not Testifying: None.