HOUSE BILL REPORT
HB 2907

As Reported by House Committee On:
Finance

Title: An act relating to providing progressive tax reform by authorizing counties with populations exceeding two million to impose an excise tax on businesses in order to reduce homelessness, save lives, and improve public safety.

Brief Description: Authorizing counties with populations over two million to impose an excise tax on business.

Sponsors: Representatives Macri, Springer, Fitzgibbon, Frame, Pollet, Cody, Chopp, Tarleton, Slatter, Doglio, Hudgins, Senn, Gregerson, Bergquist, Duerr, J. Johnson and Santos.

Brief History:
Committee Activity:
Finance: 2/4/20, 2/7/20 [DPS].

Brief Summary of Substitute Bill

- Authorizes a county with a population of at least 2 million persons to impose an annual tax on payroll expenses.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Orwall, Springer and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Stokesbary and Vick.

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

Background:

Washington local governments have no inherent power to levy taxes because the Washington Constitution (Constitution) vests that power with the Legislature. However, the Legislature

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.

may constitutionally grant taxing powers to local governments. Indeed, the Legislature has vested local governments with the power to levy a variety of taxes.

Washington primarily has two types of taxes: property and excise taxes. Under the Constitution, "property" is defined as including "everything, whether tangible or intangible, subject to ownership." A property tax is imposed on the ongoing enjoyment of the property and is levied annually. Moreover, a tax on property is absolute and unavoidable.

An excise tax has been defined as one levied upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges. The obligation to pay an excise tax is based upon the voluntary action of the person performing the act, enjoying the privilege of engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand, as in the case of a property tax, is lacking.

Payroll taxes are taxes paid on the wages and salaries of employees. The employers are either required to withhold or pay payroll taxes on behalf of employees. For example, there are two federal payroll taxes that are levied on employee payrolls: Social Security and Medicare. The employer is responsible for half of the payroll tax levied for these two programs, which is approximately 7.65 percent of the wages paid.

Summary of Substitute Bill:

<u>Payroll Expense Tax</u>.
A county with a population of at least 2 million persons may impose an annual payroll expense tax on employers engaging in business in the county. The tax must be enacted by ordinance by the county's legislative authority.

The tax rate must be at least 0.1 percent, but no more than 0.2 percent, of the employer's payroll expense to the tax year attributable to work performed or services rendered by an employer's employees in the county. The tax rate must be the same for all businesses; however, the county may impose a graduated rate that increases based on employee compensation. Payroll expense includes compensation, including net distributions and incentive payment.

Deductions from the payroll expense base are allowed for any payroll attributable to an employee with annual compensation of less than $150,000 and any payroll attributable to a grocery worker.

Certain businesses are exempted from the payroll expense tax. A business that only sells, manufactures, or distributes motor vehicle fuel and a business that only sells, manufactures, or distributes liquor are both exempt from the payroll expense tax. Federal and state government agencies and subdivisions and any local government entity is exempt. In addition, a comprehensive cancer center is exempt from the annual payroll expense tax. An exemption is also provided for a small business with less than 50 employees that pays at least 50 percent of its employees an annual compensation of $150,000 or less. If imposition of the payment expense tax on a business would violate federal or state law, the business is not required to pay the tax. A county may grant an employer a one-year exemption based on extreme financial hardship.

Annually, the dollar threshold for the small business exemption and the employee compensation deduction must be increased beginning January 1, 2021, using the prior year's June-to-June Consumer Price Index for the Seattle-Tacoma-Bellevue area. However, if the annual change is negative, no adjustment is made. The amounts must be rounded to the nearest dollar.

The employer is responsible for paying the tax and may not make any deductions from the employee's compensation to pay for this tax.

<u>Authorized Uses of Tax Proceeds</u>.
The revenues collected by the imposition of an annual payroll expense tax may be used to cover necessary costs of tax administration and for enumerated purposes in the act.

The enumerated purposes include:
- acquiring, rehabilitating, or constructing affordable housing;
- funding the operations and maintenance costs of affordable or supportive housing;
- providing rental assistance for low-income families and individuals;
- providing for housing, shelter, and evidence-based interventions that address and prevent homelessness;
- acquiring, constructing, starting up, or operating community-based behavioral health-related facilities; and
- supporting operations or services that improve public safety by providing supportive services to persons with behavioral health conditions with frequent criminal justice system involvement.

The act requires that 43 percent of the proceeds allocated for affordable housing, behavioral health, and supportive services must be shared with the city with the highest population experiencing homelessness. The county must work with the other cities and regional housing partnerships to distribute the remaining 57 percent of the proceeds equitably. All the proceeds allocated for providing for housing, shelter, and evidence-based interventions that address and prevent homelessness must be allocated directly to the regional homelessness authority.

The affordable housing assistance that is funded from the payroll expense tax proceeds may only be provided to persons whose income is at or below 80 percent of the median income of the county providing assistance. At least 50 percent of these tax proceeds must be provided to persons whose income is at or below 30 percent of the county median income.

Over a five year period, at least 50 percent the distributions of the annual payroll expense tax collected must be for affordable housing purposes and no more than 10 percent may be used for providing supportive services to persons with behavioral health conditions with frequent criminal justice system involvement.

The county and a city receiving a share of the tax revenues may issue general obligation or revenue bonds and pledge the money collected from the imposition of the tax for the repayment of the bonds.

Administrative Provisions.
The county may enact ordinances or rely on current law to facilitate the imposition, collection, and administration of the tax. The county may also enter into an interlocal agreement with a city or state agency for the administration and collection of the tax. Return and tax information must be treated as confidential and privileged and only subject to disclosure in the same manner as provided under state tax laws.

The tax authorized under this act expires 25 years after first imposed. The county legislative authority may reauthorize by adoption of a new ordinance.

The county and city receiving revenue from the payroll expense tax must each designate a committee to act as an advisory and accountability commission (Commission). The Commission must include representatives from cities and elected state representatives from each county sub-region.

Substitute Bill Compared to Original Bill:

The substitute bill adds the requirement that the Commission must include representatives from cities and elected state representatives from each county sub-region.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) It is clear that the homelessness crisis requires a broader approach—a city by city approach will not work. A coalition of stakeholders have brought forward this approach that is uniquely tailored to King County, reflecting its innovative business community. The overall concept, which is a step towards a more progressive tax system, is supported even if it is currently a work in progress. The stakeholders are committed to working towards a solution that will allow us to address homelessness, affordable housing, and the behavioral health needs of our county.

Because of our regressive tax code, the county has limited revenue options. This crisis demands more tools for the region outside of property and sales taxes. Many of the region's largest businesses want to participate in solutions and want to do so with a comprehensive county-wide approach to homelessness, affordable housing, behavioral health, and public safety.

The homelessness crisis, increased demand for affordable housing, concerns regarding public safety, and the need for more behavioral and mental health resources directly impact the employees of the county's businesses. These employees are looking for leadership on these critical issues. It is believed that the new tax proposed by this bill with a reasonable level of accountability will provide a path to address these needs.

(Opposed) Insurers are not usually subject to general excise taxes as they are subject to premium tax. The premium tax is the highest tax imposed on taxpayers by Washington, generating hundreds of millions of dollars in tax revenues. Insurance companies have never been subject to taxes at the local level and were surprised to see inclusion in section 3 of the bill. An insurance company, domiciled in Washington, is subject to retaliatory taxes on businesses in other states. Inclusion in this legislation would create a crippling disadvantage for these businesses.

There is concern about this tax being expanded statewide. This bill will result in the shifting of more business out of the Seattle area. Business is already lost to other areas due to other high costs associated with locating in the Seattle metro area. There is a need to create and maintain business-friendly climates, not punish employers for paying their employees fairly. The Legislature must do everything it can to create family wage jobs and foster economic development. Negative policies like this one have a broader impact than just King County.

(Other) The cities in King County take affordable housing and homelessness very seriously. Every city in the region is feeling the weight of suffering and a responsibility to help. The City of Auburn, like other cities in the county, was not consulted in any part of the processing and developing of this piece of legislation. This bill will have an impact on the city, but it is unknown. It is procedurally unacceptable to be excluded from the development of the legislation and related conversations, especially given the sensitive nature of the legislation. The cities were not briefed on how money is being spent and advocate for accountability.

Cities have a strong desire to have seat at the table as the legislation continues, despite the fact that the tax is imposed on our residents. This legislation lacks a defined plan on how money is being spent. Moreover it does not take into account current funding for regional homeless authority. Some small businesses could be impacted, but that is difficult to determine. There is a strong desire to maintain a competitive business environment in the cities and this will not help. It is also unclear if cities that are utilizing a local business and operating tax to fund services will be impacted as the result of this new tax.

All of Washington has been hit by homelessness, lack of affordable housing, unmet behavioral health needs, and substance use disorders. However, this solution is only focused on one county.

This bill does not provide exemption for nonprofits or research grant-funded businesses. It also does not preclude cities from imposing additional taxes and should include a preemption section. The definition of "compensation" is too broad and the same definition should be used as in the paid family leave statutes. There should be other key industry exemptions like the exemption included for grocery stores.

Persons Testifying: (In support) Representative Macri, prime sponsor; Richard De Sam Lazaro, Expedia Government Affairs; Samantha Conley, Service Employees International Union 1199 Northwest; Lauren Thomas, Hopelink; Joe Fujere, Tuta Bella; Dan Price, Gravity Payments; and John Burbank, Economic Opportunity Institute.

(Opposed) Mel Sorensen, American Property and Casualty Insurance Association, American Council of Life Insurers and American Health Insurance Plans; and Tommy Gantz, Association of Washington Business.

(Other) Nancy Backus, City of Auburn; Dana Ralph, City of Kent; Sharmila Swenson, Symmetra; Becky Bogard, Life Science Washington; Doug Levy, City of Renton; and Julia Gorton, Washington Hospitality Association.

Persons Signed In To Testify But Not Testifying: None.