
Finance Committee

HB 2948

Brief Description: Granting additional and progressive tax authority for counties with populations exceeding two million and cities therein to impose an excise tax on businesses that addresses the affordable housing crisis and reduces homelessness through evidence-based practices that will save lives and improve public safety, while also ensuring certainty and predictability for businesses.

Sponsors: Representatives Springer and Macri.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Authorizes a county with a population of at least 2 million persons to impose an annual tax on payroll expenses.
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Hearing Date: 2/27/20

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 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

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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 Bill:

Payroll Expense Tax.

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 0.25 percent of the employer's payroll expense for the tax year and must be paid quarterly. The employer must pay the payroll expense for an employee if:

- the employee is primarily assigned with the county;
- the employee is not primarily assigned to any place of business for the tax year, but performs 50 percent or more of his or her service for the tax year in the county; or
- the employee is not primarily assigned to any place of business for the tax year, does not perform 50 percent or more of his or her service in any county, and the employee resides 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;
- a business that only sells, manufactures, or distributes liquor;
- federal and state government agencies and subdivisions and any local government entity;
- a comprehensive cancer center;
- a small business with less than 50 employees and has gross receipts of less than \$3 million for the immediately preceding tax year; and
- any business that is subject to taxes under chapter 48.14 RCW.

Also, 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.

Biannually every odd year, the dollar threshold for the small business exemption and the employee compensation deduction must be increased beginning January 1, 2021. The adjustment must be done 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.

A city of a population of at least 60,000 can choose to become a participating city by a majority vote of the city's legislative authority. A participating city is entitled to receive a distribution based on 0.1 percent of the payroll expenses attributable to that city's jurisdiction.

Authorized Uses of Tax Proceeds.

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. A distribution of 0.001 percent must be made to the payroll tax oversight account in the custody of the State Treasurer for costs incurred for oversight and audits by the State Auditor and the Department of Commerce.

After the distributions for the administration of the tax to the Payroll Tax Oversight Account, and to any participating cities, the act requires disbursements for certain enumerated purposes, including:

- 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.

Sixty percent of the funds must be allocated for affordable housing purposes listed in the act and 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.

Ten percent of the funds must be used for providing supportive services to persons with behavioral health conditions with frequent criminal justice system involvement.

Twenty percent of the funds must be directly appropriated, in an amount in proportion to its population, to a city with more than 60,000 residents so long as the city's legislative authority passes a resolution in favor of the county imposing the tax. The funds may be used for any of the enumerated uses; however no more than 25 percent of the funds may be used may be used for providing supportive services to persons with behavioral health conditions with frequent criminal justice system involvement.

Ten percent of the funds are to be used for a grant program administered by the county to provide grants to cities with a population of less than 60,000. The city's legislative authority must pass a resolution in favor of the county imposing the tax in order to be eligible for a grant.

Sixty percent of the funds distributed directly to a participating city must be allocated for affordable housing.

The funds received by any city or county must not supplant existing funds.

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 must enter into an agreement with the Employment Security Department 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 10 years after first imposed, unless obligated for retirement of debt obligations. The county legislative authority may reauthorize by adoption of a new ordinance.

The county must designate a committee to act as an Advisory and Accountability Commission (Commission). The membership of the commission must consist of:

- Fifty percent of the commission must represent employers paying the tax, of which one-half must include representation from the highest 10 percent of taxpayers;
- Members who represent persons or communities served by the tax;
- One representative appointed by cities from each subregion; and
- One representative appointed by state officials from each subregion.

The Commission is tasked with identifying goals and priorities for the county-developed implementation plan, identify metric to evaluate the effectiveness of allocations, monitor the use of funds, receive biannual reports on programs, services, projects, measures, and outcomes, and hold at least one public meeting.

Appropriation: None.

Fiscal Note: Available.

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