

SENATE BILL REPORT

SB 5954

As of February 3, 2022

Title: An act relating to reducing the impacts and incidences of chronic and unsheltered homelessness.

Brief Description: Reducing the impacts and incidences of chronic and unsheltered homelessness.

Sponsors: Senators Gildon, Braun, Dozier, Fortunato, Honeyford, King, Muzzall, Schoesler, Wagoner, Warnick, Wilson, J. and Wilson, L..

Brief History:

Committee Activity: Housing & Local Government: 2/03/22.

Brief Summary of Bill

- Requires the state's annual homeless census to include persons in jails or hospitals who were homeless before entering such facilities.
- Provides a business and occupation and public utility tax credit to qualifying businesses hiring certain unemployed persons, such as persons convicted of a felony and homeless persons.
- Modifies criminal penalties for knowing possession of certain controlled and counterfeit substances.
- Expands eligibility under the consolidated emergency assistance program.
- Prohibits counties from receiving their portion of homeless housing and assistance surcharge revenue if certain conditions are not met.
- Appropriates general fund moneys for homeless encampment cleanup, drug court services and programs, permanent housing solutions for unsheltered youth and families, and emergency assistance and diversion cash assistance programs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Brandon Popovac (786-7465)

Background: State Homeless Census. The Department of Commerce (Commerce) must annually conduct a homeless census that counts all homeless individuals in coordination with existing homeless census projects, including those funded by the United States Department of Housing and Urban Development (HUD). Every year HUD requires communities across the nation to collect data on their homeless populations and to report the data to HUD. The data collection process is referred to as the Point-In-Time (PIT) count and is collected as a means to estimate the number of sheltered and unsheltered homeless individuals in the United States. Commerce provides survey forms for counties and agencies to use for their PIT counts, but counties can opt to use their own forms as long as they comply with state guidelines. Any data on subpopulations and other characteristics of the homeless must, at a minimum, be consistent with HUD requirements.

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services, and activities not classified elsewhere. Several lower rates also apply to specific business activities.

Public Utility Tax. The public utility tax (PUT) is imposed on gross income derived from the operation of public and privately owned utilities, including businesses that engage in transportation, communications, and the supply of energy, natural gas, and water. The tax is in lieu of the B&O tax. This tax applies only on sales to consumers. There are also varying rates of the PUT, depending on the specific utility activity.

Tax Preferences. Washington has over 650 tax preferences authorized in law. A tax preference includes exemptions, deductions, credits, and preferential rates. The B&O tax credits provide a dollar-for-dollar offset against tax liability.

Tax Credit for Hiring Certain Groups. The federal government enacted the Work Opportunity Tax Credit that provides a tax credit for hiring various persons, including qualified veterans. In 2015, the Legislature authorized a B&O or PUT credit to qualifying businesses that hire unemployed veterans.

Uniform Controlled Substances Act. The Uniform Controlled Substances Act regulates the manufacture, distribution, and dispensation of controlled substances. It also criminalizes certain conduct related to controlled substances and counterfeit substances. The criminal penalties for violating the Uniform Controlled Substances Act depend upon the nature of

the violation and the type of substance.

A "controlled substance" means, a drug or substance included in Schedules I through V, with some exceptions. Drugs and substances are placed on schedules based on their potential for abuse, medical use, and safety. Substances in Schedule I are the most tightly controlled, while those in Schedule V are the least tightly controlled. A "counterfeit substance" means a controlled substance that has been altered to look like a substance produced or distributed by a manufacturer, distributor, or dispenser. Related provisions regulate legend drugs—prescription drugs.

Among others, crimes contained in the Uniform Controlled Substances Act and related provisions include:

- knowing possession of a controlled substance, unless authorized by law or obtained through a valid prescription, which is a misdemeanor;
- knowing possession of 40 grams or less of marijuana, unless authorized by law, which is a misdemeanor;
- knowing possession of a counterfeit substance unless authorized by law, which is a misdemeanor;
- knowing possession of any legend drug, except pursuant to a prescription, which is a misdemeanor.

Statutory provisions addressing possession of controlled substances, counterfeit substances, and legend drugs expire July 1, 2023, at which time the statutes revert to the current language.

State v. Blake. Washington's statute governing possession of a controlled substance is a strict liability offense. That is, a person can be found guilty of possession without proof that the defendant knew they possessed the substance. In February 2021, the Washington Supreme Court found this statute to be unconstitutional, holding that the Legislature's criminalization of passive conduct with no requirement to prove criminal intent is a violation of due process. This decision invalidated any Washington sentence for simple possession of a controlled substance.

Diversion and Referral. When a case involving possession of a controlled or counterfeit substance is legally sufficient, the prosecutor is encouraged to divert such cases for assessment, treatment, or other services. For all individuals otherwise subject to arrest for possession of a counterfeit substance, controlled substance, 40 grams or less of marijuana, or a legend drug, in lieu of jail booking and referral to the prosecutor, law enforcement must offer a referral to certain assessment and services available or other program or entity responsible for receiving referrals in lieu of legal system involvement, which may include the recovery navigator program.

Therapeutic Courts. The Therapeutic Courts Act was enacted recognizing the judiciary's inherent authority to create therapeutic courts and encouraging creation of such courts by

employing evidence-based and research-based best practices. Therapeutic courts remove a defendant's or respondent's case from the criminal and civil court traditional trial track and allow those defendants or respondents the opportunity to obtain treatment services to address mental health, substance use, and other underlying behavior issues. Therapeutic courts include, but are not limited to, adult drug courts, juvenile drug courts, family dependency or family drug courts, mental health courts, DUI courts, truancy courts, domestic violence courts, and other similar courts.

Criminal Justice Treatment Account. Funds in the Criminal Justice Treatment Account may be expended for substance use disorder treatment and support services for offenders and nonviolent offenders within a drug court program, as well as the administrative and overhead costs associated with the operation of a drug court.

Housing Trust Fund. Established in 1986, the Washington Housing Trust Fund (HTF) program provides grants or loans to help communities develop and preserve affordable housing to meet the needs of low-income and special needs populations. Since 1986, the HTF has awarded over \$1 billion in funding and helped build or preserve over 50,000 units of affordable housing statewide.

Consolidated Emergency Assistance. The Consolidated Emergency Assistance Program (CEAP) provides emergency cash assistance to qualifying families with children. CEAP benefits are limited to a one-time distribution within any 12-month period and are intended to alleviate emergent conditions resulting from insufficient income and resources to provide for food, shelter, clothing, medical care, and other necessary items and services. Families must meet income requirements and be ineligible for other cash assistance programs in order to receive the CEAP benefits.

During a state of emergency and pursuant to an order from the Governor, the Department of Social and Health Services (DSHS) may extend CEAP benefits to individuals and households without children. In February 2020, Governor Inslee declared a statewide emergency in response to the novel coronavirus. Subsequent gubernatorial proclamations expanded eligibility for CEAP benefits to individuals and families without children. DSHS created the Disaster Cash Assistance Program (DCAP) to expand CEAP for this purpose and activated DCAP in April 2020.

Diversion Cash Assistance. Diversion Cash Assistance (DCA) provides alternative assistance for families who have a short-term need and do not wish to receive Temporary Assistance to Needy Families (TANF) assistance. Families that meet the income and resource requirements and can demonstrate they expect to have income and resources to meet their long-term needs are eligible under the program. Families who receive this assistance are expected to not need TANF assistance for the next 12 months. Income and resource requirements are the same as for TANF. Diversion assists families with expenses, such as housing, transportation, medical bills, employment, and child care. Families that choose to receive DCA have a maximum benefit of \$1,500.

Homeless Housing and Assistance Surcharges. The state and local homeless housing programs receive funding from the homeless housing and assistance surcharges collected by each county auditor when a document is recorded. The following surcharges related to homeless services are collected by the county, with shares of the funds distributed to the county and to the state:

- \$13 Affordable Housing for All surcharge;
- \$62 Local Homeless Housing and Assistance surcharge; and
- \$8 additional Local Homeless Housing and Assistance surcharge.

Affordable Housing for All Surcharge. Of the \$13 surcharge, approximately 60 percent is retained by the county for local affordable housing and assistance and approximately 40 percent is distributed to the state. The state's share of \$10 of the fee is deposited into the Affordable Housing for All Account, to be used by Commerce for housing and shelter for extremely low-income households. The state's share of \$3 of the fee is deposited into the Landlord Mitigation Program (LMP) Account to provide financial support to landlords of tenants who receive rental assistance.

Local Homeless Housing and Assistance Surcharge. Of the \$62 surcharge, approximately 66 percent is retained by the county for local homeless housing and assistance. The remainder is distributed to the state for deposit in the Home Security Fund and is used by Commerce to manage the State Homeless Housing Program, issue private rental housing payments, and provide housing and shelter support.

Additional Local Homeless Housing and Assistance Surcharge. Of the \$8 surcharge, approximately 90 percent is retained by the county for local homeless housing and assistance and 10 percent is distributed to the state for deposit in the Home Security Fund (HSF). The funds distributed to the state may be used by Commerce for managing the state's homeless housing programs.

Additional Housing Surcharge. In 2021, the Legislature required county auditors to collect an additional \$100 surcharge for each document recorded, with some exceptions. The funds collected must be fully remitted to the state to be distributed as follows:

- 20 percent of funds must be deposited into the Affordable Housing for All Account for the operations, maintenance, and service costs for permanent supportive housing;
- from July 1, 2021, through June 30, 2023, 4 percent of funds, and after June 30, 2023, 2 percent of funds, must be deposited into the LMP account for LMP purposes; and
- the remainder of funds must be distributed to the HSF, with at least 60 percent funds to be used for project-based vouchers for nonprofit housing providers or public housing authorities, emergency housing, rapid rehousing, and acquisition; at least 50 percent of persons receiving these services must be living unsheltered at the time of initial engagement.

Additional housing surcharge funds may also be used for foreclosure prevention services,

rental assistance for people experiencing homelessness, and tenant education and legal assistance.

Summary of Bill: State Homeless Census. The state's annual homeless census must make every effort to count persons who are admitted into hospitals or incarcerated in local jails and had no permanent address before entering such facilities. Any data or information collected during the annual homeless census about persons who are admitted into hospitals or incarcerated in local jails and had no permanent address before entering such facilities is not required to be reported to HUD.

Tax Credit for Hiring Certain Groups. PUT or B&O tax credits are provided to businesses providing qualified employment positions to certain unemployed persons, such as persons convicted of a felony, recipients of certain federal or state benefits, and homeless persons. Definitions are provided for qualifying employee, person convicted of a felony, and homeless person.

The tax credit is equal to the lesser of 10 percent or \$500 of wages and benefits paid up to a maximum of \$500 for each qualified employment position filled by a qualifying employee hired on or after October 1, 2022. Unused credits can be carried over to the next fiscal year. No refunds may be granted for this credit. Qualifying businesses may not claim both B&O and PUT credits.

If an employer discharges a qualifying employee for whom the employer has claimed a credit, the employer may not claim a new credit under this act for one year from the date the qualifying employee was discharged, unless the qualifying employee was discharged for misconduct connected with the employee's work or discharged due to a felony or gross misdemeanor conviction, and the employer contemporaneously documents the reason for discharge. Credits may be earned for tax reporting periods through June 30, 2031, and no credits may be claimed after June 30, 2032.

The Joint Legislative Audit Review Committee (JLARC) must review the tax credits established by December 31, 2031. If JLARC finds the number of unemployed persons who meet the criteria of a qualified employee decrease by 30 percent, then the Legislature intends for the legislative auditor to recommend extending the expiration date of this tax preference. In order to obtain the necessary data, JLARC should refer to unemployment rates from the Employment Security Department and the Bureau of Labor Statistics.

Uniform Controlled Substances Act. A person who is guilty of possession of a controlled substance or counterfeit substance is guilty of a Class C felony. Statutory provisions addressing possession of controlled substances, counterfeit substances, and legend drugs set to expire July 1, 2023, are made permanent.

Diversion and Referral. When a case involving knowing possession of a controlled or counterfeit substance is legally sufficient, the prosecutor is encouraged to divert such cases

for assessment, treatment, or other services only for a person's first two violations. For all individuals otherwise subject to arrest for possession of a counterfeit substance, controlled substance, 40 grams or less of marijuana, or a legend drug, in lieu of jail booking and referral to the prosecutor, law enforcement is authorized rather than required to offer a referral to certain assessment and services available or other program or entity responsible for receiving referrals, which may include the recovery navigator program.

Criminal Justice Treatment Account. An appropriation of \$10,000,000 from the criminal justice treatment account is provided to the State Health Care Authority to fund drug court programs and services.

Housing Trust Fund. An appropriation of \$51,610,000 from the general fund is provided to the Housing Trust Fund to provide permanent housing solutions for unsheltered youth, young adults, and families with children. Commerce may expend such moneys for housing acquisition, construction, or other housing production costs with the goal of ending unsheltered youth and young adult homelessness.

Consolidated Emergency Assistance. CEAP is expanded to include individuals and families without children. An appropriation of \$750,000 from the general fund is provided to DSHS to provide assistance to eligible families and individuals under CEAP.

Diversion Cash Assistance. An appropriation of \$5,000,000 from the general fund is provided to DSHS to provide DCA and additional emergency assistance to eligible families.

Homeless Housing and Assistance Surcharges. A county may not receive or be granted funds deposited in the HSF or Affordable Housing for All account from the Affordable Housing for All surcharge, local homeless housing and assistance surcharges, and additional housing surcharge until the county adopts an ordinance:

- prohibiting supervised injection sites within its jurisdiction; and
- making it unlawful for any person to camp on public property, without prior authorization from the county, within 500 feet of a public or private elementary or secondary school, public park, or municipal courthouse.

Homeless Encampment Cleanup. The Department of Ecology must provide grants to local governments to clean up solid, hazardous, and infectious waste generated by homeless encampments, subject to the availability of appropriated amounts. An appropriation of \$25,000,000 from the general fund to the Department of Ecology is provided for this purpose.

Appropriation: The bill contains appropriations totaling \$92,360,000 from the general fund.

Fiscal Note: Requested on January 30, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington State has seen a rise in homelessness over the last decade, especially with the chronically homeless population. Unsheltered homelessness has also risen in the state by 70 percent, while the rest of the nation is seeing a net decline in chronic and unsheltered homelessness. The bill is an aggressive approach that: tries to get better data for annual homeless counts, ensures encampments are clean of hazardous and toxic waste, provides emergency housing to eliminate unsheltered youth and families, doubles the amount of rental and utility assistance necessary for persons to stay in their homes, helps certain individuals who are having a hard time find a job become more self-sufficient through a tax incentive for businesses, doubles funding for local drug courts, and helps keep schools, courts, and parks safe from nearby unauthorized encampments. Homelessness has a myriad of root causes, and this bill attempts to address such causes by increasing public safety and providing a path to addiction recovery and out of homelessness. The Ecology grants for encampment cleanup would help some cities that have already invested local funds in expensive encampment cleanups near downtown and surrounding neighborhoods. The bill is a common sense shift in the right direction by making knowing possession of controlled and counterfeit substances illegal. The expansion of drug court services is a worthwhile objective.

CON: The bill is counterproductive to addressing the homelessness crisis. The housing first model, behavioral health resources, and noncongregate shelters work as proven strategies. The criminal justice system should not intervene in public health crises. We need a more humane and holistic approach in addressing homelessness. The main drivers of homelessness in income inequality, rising rents, and a shortage of affordable homes are not addressed in the bill, but the investment in housing for unsheltered youth from the HTF is appreciated. Best practices to end homelessness, like harm reduction and housing first models, are also absent in the bill. Jurisdictions would have to criminalize homelessness to receive homeless assistance funding. The direct link between rent increases and homelessness is undeniable and not addressed in the bill. It would be wiser to invest in solutions to homelessness that are not band aids or cleanups that do not solve the problem.

OTHER: Providing additional funding for drug court services and programs would severely impact homelessness. Such therapeutic courts can incentivize successful outcomes, since it includes both treatment, counseling, and an enforcement mechanism. Drug courts impact participant lives for the better and are appreciated by the participants' families. A diversion referral system without consequences lacks incentives for persons to enter into treatment. The bill is alarming as it will allow a backdoor into increased controlled substance felony convictions. Drug court supports and services are appreciated, but prosecutors are gatekeepers and ultimately have the power to make such a referral, which is unfair since some programs have mandatory fines that are often not affordable. We cannot punish people for their deficits. Most drug court studies show that participants have a lower

recidivism rate regardless of graduation status due to community connections. There are other prohibitive factors to drug court access that are problematic. The bill does not address the recovery and probable relapse stages of drug addiction.

Persons Testifying: PRO: Senator Chris Gildon, Prime Sponsor; Andrew Rolwes, Downtown Spokane Partnership.

CON: Alaa Hasan, Low Income Housing Institute; Michele Thomas, Washington Low Income Housing Alliance.

OTHER: Shawn Sant, Franklin County Prosecutor/WA Association of Prosecuting Attorneys; Kari Reardon, WDA/WACDL.

Persons Signed In To Testify But Not Testifying: No one.