

# SENATE BILL REPORT

## E2SHB 1069

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As of March 10, 2021

**Title:** An act relating to local government fiscal flexibility.

**Brief Description:** Concerning local government fiscal flexibility.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Pollet, Duerr, Leavitt, Wylie, Tharinger, Kloba, Senn, Ryu, Callan and Fey).

**Brief History:** Passed House: 2/25/21, 56-42.

**Committee Activity:** Housing & Local Government: 3/10/21.

### Brief Summary of Bill

- Allows revenue from criminal justice sales taxes, the Criminal Justice Assistance Accounts, and certain King County excess property tax levies to supplant existing funds through December 31, 2023.
- Allows the sales and use tax for chemical dependency or mental health treatment services collected by a city to be used for modifications to existing facilities to address health and safety needs necessary to the provision of chemical dependency or mental health treatment programs and services.
- Reduces restrictions on the allowed use of funds from criminal justice sales taxes and real estate excise taxes through December 31, 2023.
- Increases the amount of time a water and electricity or sewage lien can be applied after the declaration of an emergency by the Governor that prevents collection.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Bonnie Kim (786-7316)

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*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.*

**Background:** Cities and counties only possess the taxation power that is granted to them by the state Constitution or by the Legislature. The Legislature has granted the power to tax to these local governments in a variety of ways. Some of the taxes authorized by the Legislature can be used without restriction for purposes determined by the cities and counties. Other taxes authorized by the Legislature can only be imposed for limited purposes, and local governments are often prohibited from using this revenue to supplant other revenue that was used for the designated purpose.

Criminal Justice Sales Tax. The Legislature has authorized a local government to impose a tax for criminal justice expenses. A county legislative authority may, subject to a referendum, impose a sales tax of 0.01 percent to be used for criminal justice purposes. Ten percent of the revenue from this tax goes to the county, with the remainder distributed between the county and cities based on population. Similarly, a county may submit a proposition to the voters to authorize an additional 0.03 percent sales tax. A city may also impose a 0.01 percent sales tax; the county tax within the city must be reduced by the amount imposed by the city, so the total rate cannot exceed 0.03 percent. One-third of the revenue from this tax is required to be used for criminal justice purposes. Criminal justice purposes are activities that substantially assist the criminal justice system, including circumstances where there is ancillary benefit to the civil justice system, such as programs providing domestic violence services.

Criminal Justice Assistance Accounts. Transfers from the state represent another revenue source for local governments. With the County Criminal Justice Assistance Account and the Municipal Criminal Justice Assistance Account, the state directly provides funding for criminal justice purposes to local governments. The amount a county or city receives from the account depends on various factors, including its crime rate, population, and whether it has imposed the criminal justice sales taxes. These funds must be used for criminal justice purposes and may not supplant existing funds.

Chemical Dependency and Mental Health Treatment Services Tax. The Legislature authorized a sales tax to be used to fund the operation of chemical dependency or mental health treatment programs or for the operation of therapeutic court programs. This tax may be imposed by a county, or, because Pierce County had not imposed the tax by 2011, by a city with more than 30,000 people in Pierce County, at a rate of 0.01 percent. Revenue from the tax must be used solely for chemical dependency or mental health treatment programs and services and for the operation of therapeutic court programs and services.

Lodging Tax. Another tax authorized by the Legislature for cities and counties is a lodging tax. This tax applies to furnishing lodging, but not to the rental or lease of property. A sale of lodging for more than one month is presumed to be a rental or lease.

Real Estate Excise Tax. Cities and counties are authorized to impose an excise tax on the sale of real property. Counties may impose this tax in unincorporated areas, while cities may impose the tax within the city. In either case, the tax may not exceed 0.0025 percent of

the sale price. The revenue from this tax must be used solely to finance capital improvements. Cities and counties with fewer than 5000 people that do not plan under the Growth Management Act may instead use the revenue for any capital purpose. A city or county that satisfies various criteria, including producing a written report demonstrating its capital projects are fully funded, may use \$100,000 or 25 percent of this revenue, whichever is greater, for the maintenance of capital projects. The amount used for maintenance may not exceed \$1,000,000. Cities and counties planning under the Growth Management Act may, with voter approval, impose an additional 0.0025 percent tax for use on certain identified capital projects. Of this revenue, \$100,000 or 25 percent, whichever is greater, may be used for infrastructure maintenance or for other capital projects. This amount, used in this way, may not exceed \$1,000,000.

Property Tax Levies. Aside from excise or sales taxes, the other primary funding source for local governments is property tax. The amount of property tax that can be imposed is limited. This limit can sometimes be exceeded when authorized by voters for specified purposes. In King County, outside of revenue from levies approved in 2009-2011, this additional revenue cannot supplant existing funding sources. In other counties, revenues from levies approved after 2009 can be used to supplant existing local government funds.

Utility Liens. Another revenue source for local governments is the fees charged for the provision of water or electricity. A city or town may impose a lien on the property for four months of past due charges, but may not impose a lien for any charges more than four months past due. Similarly, a city or town that owns its own sewer system may charge a fee for sewer service. A lien up to six months of delinquent charges may be imposed without any recording. A lien for a longer period must be filed with the county auditor.

**Summary of Bill:** Criminal Justice Sales Tax. Through December 31, 2023, the criminal justice purposes for which revenue from this tax can be used includes local government programs with a reasonable relationship to reducing interactions with the criminal justice system, including by reducing homelessness or improving behavioral health.

Criminal Justice Assistance Accounts. Through December 31, 2023, revenue received from the Criminal Justice Assistance Accounts may be used to supplant existing funding.

Chemical Dependency and Mental Health Treatment Services Tax. Revenue from the Chemical Dependency and Mental Health Treatment Services Tax imposed by a city may also be used for modifications to existing facilities to address health and safety needs necessary for the provision of chemical dependency or mental health services funded by the tax.

Lodging Tax. Sales of lodging of less than one month are presumed to not be a rental or lease and thus, subject to sales and use tax.

Real Estate Excise Tax. Cities and counties imposing the first 0.0025 percent real estate tax

may use the greater of \$100,000 or 25 percent of revenue received for the maintenance of capital projects through December 31, 2023. Cities and counties imposing the additional 0.0025 percent real estate tax may similarly use the greater of \$100,000 or 25 percent of that revenue for the operation and maintenance of capital projects through December 31, 2023.

Property Tax Levies. In King County, revenues from levies approved in 2015-2022 may be used to supplant existing revenue.

Utility Liens. A lien for water or electricity may apply for charges more than four months past due if the city or town has been unable to pursue collection or a lien against the premises due to an emergency declaration by the Governor. After the expiration of the declaration, a lien for such past due charges may be imposed within the latter of three months of the expiration, or within three months of the ratepayer's failure to abide by a payment plan that would have allowed the ratepayer to pay over a period of six months or more.

A lien for past due sewage charges may be effective for more than six months of past due charges without recording the lien, if collection of the charges was impacted by a declaration of an emergency by the Governor. In such circumstances, a lien may be filed for all charges within the period covered by the declaration and may be effective for six months after the expiration of the emergency.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except for section 9, which, because of a double amendment, takes effect July 1, 2022.

**Staff Summary of Public Testimony:** PRO: Local governments experienced a drop in revenue early in the pandemic and looked at restrictions on use of funds. This is an urgent pandemic response bill where many of the provisions expire in 2023. Section 7 only affects Tacoma and is narrowly tailored. Cities are asking for temporary fiscal flexibility on restricted revenues to provide local options. During the pandemic, we need to provide housing and services at a different level and need extra flexibility to support this crisis. We wanted to provide a temporary menu of options for locals to increase flexibility. Part 5 provides additional flexibility to cities on the use of utility liens. This bill allows locals to use existing funds to meet urgent needs during the pandemic.

CON: Section 2 through 6 allow supplanting of local criminal justice revenues and expands some definitions. If we divert funding away from criminal justice we are putting public safety at risk.

**Persons Testifying:** PRO: Briahna Murray, City of Tacoma; Candice Bock, Association of Washington Cities; Commissioner Ron Wesen, Skagit County; Michael Jones, City of Blaine; Mike Hoover, Washington State Association of Counties; Mayor Adrian Cortes, City of Battle Ground.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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