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**SUBSTITUTE SENATE BILL 5027**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** Senate Committee on Water, Energy & Environment (originally sponsored by Senator Jacobsen)

READ FIRST TIME 02/17/05.

1            AN ACT Relating to the collection of the real estate excise tax  
2 upon transfers of water rights; amending RCW 90.03.280, 82.45.010, and  
3 82.45.090; adding a new section to chapter 90.03 RCW; adding a new  
4 section to chapter 90.44 RCW; creating a new section; prescribing  
5 penalties; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** The legislature intends to improve the real  
8 estate excise tax reporting and collection process for the transfer of  
9 water rights that are transferred separately from the land. The  
10 legislature intends to improve reporting by requiring the department of  
11 ecology and water conservancy boards to provide the department of  
12 revenue with information about these transfers and to allow the  
13 reporting and payment of any real estate excise tax for these transfers  
14 to be made directly to the department of revenue, thereby relieving the  
15 counties of responsibility for collection of such tax payments and  
16 reports. The legislature intends for these improvements in processing  
17 to result in a simpler and more coordinated system for collection of  
18 the real estate excise tax for these types of water rights transfers.

1       **Sec. 2.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read  
2 as follows:

3       Upon receipt of a proper application, the department shall instruct  
4 the applicant to publish notice thereof in a form and within a time  
5 prescribed by the department in a newspaper of general circulation  
6 published in the county or counties in which the storage, diversion,  
7 and use is to be made, and in such other newspapers as the department  
8 may direct, once a week for two consecutive weeks. Upon receipt by the  
9 department of an application it shall send notice thereof containing  
10 pertinent information to the director of fish and wildlife. Within  
11 thirty days of receipt, the department shall provide to the department  
12 of revenue a copy of any application to change the place of use of a  
13 water right to be transferred separately from the land to which it is  
14 appurtenant and to which it is to become appurtenant.

15       NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW  
16 to read as follows:

17       In addition to filing with the county auditor under RCW  
18 90.03.380(1), the department shall also provide to the department of  
19 revenue a copy of the certificate and report of examination where the  
20 department has approved a change in the place of use of a water right  
21 to be transferred from the land to which it is appurtenant and to  
22 become appurtenant.

23       NEW SECTION. **Sec. 4.** A new section is added to chapter 90.44 RCW  
24 to read as follows:

25       Within thirty days of receipt, the department shall provide to the  
26 department of revenue a copy of any application filed pursuant to RCW  
27 90.44.100 to change the place of use of a ground water right to be  
28 transferred from the land to which it is appurtenant and to become  
29 appurtenant.

30       **Sec. 5.** RCW 82.45.010 and 2000 2nd sp.s. c 4 s 26 are each amended  
31 to read as follows:

32       (1) As used in this chapter, the term "sale" shall have its  
33 ordinary meaning and shall include any conveyance, grant, assignment,  
34 quitclaim, or transfer of the ownership of or title to real property,  
35 including standing timber, or any estate or interest therein for a

1 valuable consideration, and any contract for such conveyance, grant,  
2 assignment, quitclaim, or transfer, and any lease with an option to  
3 purchase real property, including standing timber, or any estate or  
4 interest therein or other contract under which possession of the  
5 property is given to the purchaser, or any other person at the  
6 purchaser's direction, and title to the property is retained by the  
7 vendor as security for the payment of the purchase price. The term  
8 also includes the grant, assignment, quitclaim, sale, or transfer of  
9 improvements constructed upon leased land.

10 (2) The term "sale" also includes the transfer or acquisition  
11 within any twelve-month period of a controlling interest in any entity  
12 with an interest in real property located in this state for a valuable  
13 consideration. For purposes of this subsection, all acquisitions of  
14 persons acting in concert shall be aggregated for purposes of  
15 determining whether a transfer or acquisition of a controlling interest  
16 has taken place. The department of revenue shall adopt standards by  
17 rule to determine when persons are acting in concert. In adopting a  
18 rule for this purpose, the department shall consider the following:

19 (a) Persons shall be treated as acting in concert when they have a  
20 relationship with each other such that one person influences or  
21 controls the actions of another through common ownership; and

22 (b) When persons are not commonly owned or controlled, they shall  
23 be treated as acting in concert only when the unity with which the  
24 purchasers have negotiated and will consummate the transfer of  
25 ownership interests supports a finding that they are acting as a single  
26 entity. If the acquisitions are completely independent, with each  
27 purchaser buying without regard to the identity of the other  
28 purchasers, then the acquisitions shall be considered separate  
29 acquisitions.

30 (3) The term "sale" shall not include:

31 (a) A transfer by gift, devise, or inheritance.

32 (b) A transfer of any leasehold interest other than of the type  
33 mentioned above.

34 (c) A cancellation or forfeiture of a vendee's interest in a  
35 contract for the sale of real property, whether or not such contract  
36 contains a forfeiture clause, or deed in lieu of foreclosure of a  
37 mortgage.

1 (d) The partition of property by tenants in common by agreement or  
2 as the result of a court decree.

3 (e) The assignment of property or interest in property from one  
4 spouse to the other in accordance with the terms of a decree of divorce  
5 or in fulfillment of a property settlement agreement.

6 (f) The assignment or other transfer of a vendor's interest in a  
7 contract for the sale of real property, even though accompanied by a  
8 conveyance of the vendor's interest in the real property involved.

9 (g) Transfers by appropriation or decree in condemnation  
10 proceedings brought by the United States, the state or any political  
11 subdivision thereof, or a municipal corporation.

12 (h) A mortgage or other transfer of an interest in real property  
13 merely to secure a debt, or the assignment thereof.

14 (i) Any transfer or conveyance made pursuant to a deed of trust or  
15 an order of sale by the court in any mortgage, deed of trust, or lien  
16 foreclosure proceeding or upon execution of a judgment, or deed in lieu  
17 of foreclosure to satisfy a mortgage or deed of trust.

18 (j) A conveyance to the federal housing administration or veterans  
19 administration by an authorized mortgagee made pursuant to a contract  
20 of insurance or guaranty with the federal housing administration or  
21 veterans administration.

22 (k) A transfer in compliance with the terms of any lease or  
23 contract upon which the tax as imposed by this chapter has been paid or  
24 where the lease or contract was entered into prior to the date this tax  
25 was first imposed.

26 (l) The sale of any grave or lot in an established cemetery.

27 (m) A sale by the United States, this state or any political  
28 subdivision thereof, or a municipal corporation of this state.

29 (n) A sale to a regional transit authority or public corporation  
30 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
31 81.112.300.

32 (o) A transfer of real property, however effected, if it consists  
33 of a mere change in identity or form of ownership of an entity where  
34 there is no change in the beneficial ownership. These include  
35 transfers to a corporation or partnership which is wholly owned by the  
36 transferor and/or the transferor's spouse or children: PROVIDED, That  
37 if thereafter such transferee corporation or partnership voluntarily  
38 transfers such real property, or such transferor, spouse, or children

1 voluntarily transfer stock in the transferee corporation or interest in  
2 the transferee partnership capital, as the case may be, to other than  
3 (1) the transferor and/or the transferor's spouse or children, (2) a  
4 trust having the transferor and/or the transferor's spouse or children  
5 as the only beneficiaries at the time of the transfer to the trust, or  
6 (3) a corporation or partnership wholly owned by the original  
7 transferor and/or the transferor's spouse or children, within three  
8 years of the original transfer to which this exemption applies, and the  
9 tax on the subsequent transfer has not been paid within sixty days of  
10 becoming due, excise taxes shall become due and payable on the original  
11 transfer as otherwise provided by law.

12 (p)(i) A transfer that for federal income tax purposes does not  
13 involve the recognition of gain or loss for entity formation,  
14 liquidation or dissolution, and reorganization, including but not  
15 limited to nonrecognition of gain or loss because of application of  
16 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue  
17 Code of 1986, as amended.

18 (ii) However, the transfer described in (p)(i) of this subsection  
19 cannot be preceded or followed within a twelve-month period by another  
20 transfer or series of transfers, that, when combined with the otherwise  
21 exempt transfer or transfers described in (p)(i) of this subsection,  
22 results in the transfer of a controlling interest in the entity for  
23 valuable consideration, and in which one or more persons previously  
24 holding a controlling interest in the entity receive cash or property  
25 in exchange for any interest the person or persons acting in concert  
26 hold in the entity. This subsection (3)(p)(ii) does not apply to that  
27 part of the transfer involving property received that is the real  
28 property interest that the person or persons originally contributed to  
29 the entity or when one or more persons who did not contribute real  
30 property or belong to the entity at a time when real property was  
31 purchased receive cash or personal property in exchange for that person  
32 or persons' interest in the entity. The real estate excise tax under  
33 this subsection (3)(p)(ii) is imposed upon the person or persons who  
34 previously held a controlling interest in the entity.

35 (q) The transfer of a water right to the state of Washington for  
36 administration as a trust water right under chapter 90.38 or 90.42 RCW.

37 (r) The transfer of a water right to a municipally owned public

1 water system or to an irrigation district for the purpose of  
2 consolidation of the water right into the water supply services  
3 provided by the system or district.

4 (s) The transfer of a water right to the United States for purposes  
5 of instream flows, municipal water supply, irrigation, or other  
6 beneficial uses.

7 (t) An exchange of a water right for inclusion of the land  
8 associated with that right in an area served by a water system as  
9 defined by RCW 80.04.010 when such inclusion is the sole compensation  
10 received.

11 **Sec. 6.** RCW 82.45.090 and 2003 c 53 s 404 are each amended to read  
12 as follows:

13 (1) Except for: (a) A sale of a beneficial interest in real  
14 property where no instrument evidencing the sale is recorded in the  
15 official real property records of the county in which the property is  
16 located, or (b) the sale of a water right that is transferred  
17 separately from the land, or (c) both (a) and (b) of this subsection,  
18 the tax imposed by this chapter shall be paid to and collected by the  
19 treasurer of the county within which is located the real property which  
20 was sold. In collecting the tax the treasurer shall act as agent for  
21 the state. The county treasurer shall cause a stamp evidencing  
22 satisfaction of the lien to be affixed to the instrument of sale or  
23 conveyance prior to its recording or to the real estate excise tax  
24 affidavit in the case of used mobile home sales and used floating home  
25 sales. A receipt issued by the county treasurer for the payment of the  
26 tax imposed under this chapter shall be evidence of the satisfaction of  
27 the lien imposed hereunder and may be recorded in the manner prescribed  
28 for recording satisfactions of mortgages. Except for an instrument of  
29 sale or conveyance for the sale of water right that is transferred  
30 separately from the land, no instrument of sale or conveyance  
31 evidencing a sale subject to the tax shall be accepted by the county  
32 auditor for filing or recording until the tax shall have been paid and  
33 the stamp affixed thereto; in case the tax is not due on the transfer,  
34 the instrument shall not be so accepted until suitable notation of such  
35 fact has been made on the instrument by the treasurer.

36 (2) For a sale of a beneficial interest in real property where a  
37 tax is due under this chapter and where no instrument is recorded in

1 the official real property records of the county in which the property  
2 is located, the sale shall be reported to the department of revenue  
3 within five days from the date of the sale on such returns or forms and  
4 according to such procedures as the department may prescribe. Such  
5 forms or returns shall be signed by both the transferor and the  
6 transferee and shall be accompanied by payment of the tax due.

7 (3) For the sale of a water right that is transferred separately  
8 from the land and tax is due under this chapter, the sale shall be  
9 reported to the department within five days from the date of the sale  
10 on such returns and according to such procedures as the department may  
11 prescribe. The transferor and the transferee must sign such returns.  
12 Payment of the tax due must accompany the return. Any person who  
13 intentionally makes a false statement on any return required to be  
14 filed with the department under this chapter is guilty of perjury.

15 (4) Any person who intentionally makes a false statement on any  
16 return or form required to be filed with the department under this  
17 chapter is guilty of perjury under chapter 9A.72 RCW.

18 NEW SECTION. Sec. 7. If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 8. This act takes effect August 1, 2005.

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