
SUBSTITUTE HOUSE BILL 2448

State of Washington

65th Legislature

2018 Regular Session

By House Finance (originally sponsored by Representatives Senn, Tharinger, Chapman, Kilduff, Macri, Robinson, Appleton, Kloba, Pollet, Santos, and Tarleton)

READ FIRST TIME 01/24/18.

1 AN ACT Relating to increasing the availability of housing for
2 developmentally disabled persons; amending RCW 82.45.010 and
3 43.185.050; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is need
6 to expand housing opportunities for persons with developmental
7 disabilities. The legislature finds it is often preferable for
8 persons with developmental disabilities to remain residing in their
9 home, when it is safe and appropriate, to foster ongoing stability.
10 The legislature recognizes that securing a child's future housing and
11 services provides the parents of persons with developmental
12 disabilities peace of mind. The legislature further finds that
13 providing a new mechanism for the transfer of residential property
14 into housing for persons with developmental disabilities expands the
15 state's housing capacity and helps meet demand. The legislature
16 further finds that utilizing existing residential property will
17 reduce the demands on the housing trust fund. The legislature finds
18 that there is an opportunity and need, for advocates and the
19 supporters of the developmental disabilities community to work
20 together, to develop model transfer agreements that will provide

1 peace of mind and assist parents of children with developmental
2 disabilities more readily access this program.

3 NEW SECTION. **Sec. 2.** (1) This section is the tax preference
4 performance statement for the tax preference contained in section 3,
5 chapter . . . , Laws of 2018 (section 3 of this act). This performance
6 statement is only intended to be used for subsequent evaluation of
7 the tax preference. It is not intended to create a private right of
8 action by any party or to be used to determine eligibility for
9 preferential tax treatment.

10 (2) The legislature categorizes this tax preference as one
11 intended to induce certain designated behavior by taxpayers, as
12 indicated in RCW 82.32.808(2)(a).

13 (3) It is the legislature's specific public policy objective to
14 reduce the tax burden on individuals and businesses imposed by the
15 existing real estate excise tax rates.

16 (4) If a review finds that there is an increase of residential
17 property transfers by parents of a person with developmental
18 disabilities to a qualified entity as a result of the relief from
19 this tax preference, then the legislature intends to extend the
20 expiration date of this tax preference.

21 (5) In order to obtain the data necessary to perform the review
22 in subsection (4) of this section, the joint legislative audit and
23 review committee may refer to any data collected by the state.

24 **Sec. 3.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to
25 read as follows:

26 (1) As used in this chapter, the term "sale" has its ordinary
27 meaning and includes any conveyance, grant, assignment, quitclaim, or
28 transfer of the ownership of or title to real property, including
29 standing timber, or any estate or interest therein for a valuable
30 consideration, and any contract for such conveyance, grant,
31 assignment, quitclaim, or transfer, and any lease with an option to
32 purchase real property, including standing timber, or any estate or
33 interest therein or other contract under which possession of the
34 property is given to the purchaser, or any other person at the
35 purchaser's direction, and title to the property is retained by the
36 vendor as security for the payment of the purchase price. The term
37 also includes the grant, assignment, quitclaim, sale, or transfer of
38 improvements constructed upon leased land.

1 (2)(a) The term "sale" also includes the transfer or acquisition
2 within any twelve-month period of a controlling interest in any
3 entity with an interest in real property located in this state for a
4 valuable consideration.

5 (b) For the sole purpose of determining whether, pursuant to the
6 exercise of an option, a controlling interest was transferred or
7 acquired within a twelve-month period, the date that the option
8 agreement was executed is the date on which the transfer or
9 acquisition of the controlling interest is deemed to occur. For all
10 other purposes under this chapter, the date upon which the option is
11 exercised is the date of the transfer or acquisition of the
12 controlling interest.

13 (c) For purposes of this subsection, all acquisitions of persons
14 acting in concert must be aggregated for purposes of determining
15 whether a transfer or acquisition of a controlling interest has taken
16 place. The department must adopt standards by rule to determine when
17 persons are acting in concert. In adopting a rule for this purpose,
18 the department must consider the following:

19 (i) Persons must 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 (ii) When persons are not commonly owned or controlled, they must
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
26 single entity. If the acquisitions are completely independent, with
27 each purchaser buying without regard to the identity of the other
28 purchasers, then the acquisitions are considered separate
29 acquisitions.

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

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

32 (b) A transfer by transfer on death deed, to the extent that it
33 is not in satisfaction of a contractual obligation of the decedent
34 owed to the recipient of the property.

35 (c) A transfer of any leasehold interest other than of the type
36 mentioned above.

37 (d) A cancellation or forfeiture of a vendee's interest in a
38 contract for the sale of real property, whether or not such contract
39 contains a forfeiture clause, or deed in lieu of foreclosure of a
40 mortgage.

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

3 (f) The assignment of property or interest in property from one
4 spouse or one domestic partner to the other spouse or other domestic
5 partner in accordance with the terms of a decree of dissolution of
6 marriage or state registered domestic partnership or in fulfillment
7 of a property settlement agreement.

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

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

14 (i) A mortgage or other transfer of an interest in real property
15 merely to secure a debt, or the assignment thereof.

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

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

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

28 (m) The sale of any grave or lot in an established cemetery.

29 (n) A sale by the United States, this state or any political
30 subdivision thereof, or a municipal corporation of this state.

31 (o) A sale to a regional transit authority or public corporation
32 under RCW 81.112.320 under a sale/leaseback agreement under RCW
33 81.112.300.

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

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

19 (q)(i) A transfer that for federal income tax purposes does not
20 involve the recognition of gain or loss for entity formation,
21 liquidation or dissolution, and reorganization, including but not
22 limited to nonrecognition of gain or loss because of application of
23 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
24 revenue code of 1986, as amended.

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

1 person or persons who previously held a controlling interest in the
2 entity.

3 (r) A qualified sale of a manufactured/mobile home community, as
4 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
5 but before December 31, 2018.

6 (s)(i) A qualified transfer of residential property by a legal
7 representative of a person with developmental disabilities to a
8 qualified entity subject to the following conditions:

9 (A) The adult child with developmental disabilities of the
10 transferor of the residential property retains a life estate in the
11 property and must be allowed to reside in the residence or successor
12 property so long as the placement is safe and appropriate as
13 determined by the department of social and health services;

14 (B) The title to the residential property is conveyed without the
15 receipt of consideration by the legal representative of a person with
16 developmental disabilities to a qualified entity;

17 (C) The residential property must have no more than four living
18 units located on it; and

19 (D) The residential property transferred must remain in continued
20 use for fifty years by the qualified entity as supported living for
21 persons with developmental disabilities by the qualified entity or
22 successor entity. If the qualified entity sells or otherwise conveys
23 ownership of the residential property the proceeds of the sale or
24 conveyance must be used to acquire similar residential property and
25 such similar residential property must be considered the successor
26 for continued use. The property will not be considered in continued
27 use if the department of social and health services finds that the
28 property has failed, after a reasonable time to remedy, to meet any
29 health and safety statutory or regulatory requirements. If the
30 department of social and health services determines that the property
31 fails to meet the requirements for continued use, the department of
32 social and health services must notify the department and the real
33 estate excise tax based on the value of the property at the time of
34 the transfer into use as residential property for persons with
35 developmental disabilities becomes immediately due and payable by the
36 qualified entity. The tax due is not subject to penalties, fees, or
37 interest under this title.

38 (ii) For the purposes of this subsection (3)(s) the definitions
39 in RCW 71A.10.020 apply.

40 (iii) A "qualified entity" is:

1 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
2 of the federal internal revenue code of 1986, as amended, as of the
3 effective date of this section, or a subsidiary under the same
4 taxpayer identification number that provides residential supported
5 living for persons with developmental disabilities; or

6 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
7 that exclusively serves persons with developmental disabilities.

8 (iv) In order to receive an exemption under this subsection
9 (3)(s) an affidavit must be submitted by the transferor of the
10 residential property and must include a copy of the transfer
11 agreement and any other documentation as required by the department.

12 **Sec. 4.** RCW 43.185.050 and 2017 3rd sp.s. c 12 s 13 are each
13 amended to read as follows:

14 (1) The department must use moneys from the housing trust fund
15 and other legislative appropriations to finance in whole or in part
16 any loans or grant projects that will provide housing for persons and
17 families with special housing needs and with incomes at or below
18 fifty percent of the median family income for the county or standard
19 metropolitan statistical area where the project is located. At least
20 thirty percent of these moneys used in any given funding cycle
21 (~~shall~~) must be for the benefit of projects located in rural areas
22 of the state as defined by the department. If the department
23 determines that it has not received an adequate number of suitable
24 applications for rural projects during any given funding cycle, the
25 department may allocate unused moneys for projects in nonrural areas
26 of the state.

27 (2) Activities eligible for assistance from the housing trust
28 fund and other legislative appropriations include, but are not
29 limited to:

30 (a) New construction, rehabilitation, or acquisition of low and
31 very low-income housing units;

32 (b) Rent subsidies;

33 (c) Matching funds for social services directly related to
34 providing housing for special-need tenants in assisted projects;

35 (d) Technical assistance, design and finance services and
36 consultation, and administrative costs for eligible nonprofit
37 community or neighborhood-based organizations;

38 (e) Administrative costs for housing assistance groups or
39 organizations when such grant or loan will substantially increase the

1 recipient's access to housing funds other than those available under
2 this chapter;

3 (f) Shelters and related services for the homeless, including
4 emergency shelters and overnight youth shelters;

5 (g) Mortgage subsidies, including temporary rental and mortgage
6 payment subsidies to prevent homelessness;

7 (h) Mortgage insurance guarantee or payments for eligible
8 projects;

9 (i) Down payment or closing cost assistance for eligible first-
10 time home buyers;

11 (j) Acquisition of housing units for the purpose of preservation
12 as low-income or very low-income housing; (~~and~~)

13 (k) Projects making housing more accessible to families with
14 members who have disabilities; and

15 (l) Remodeling and improvements as required to meet building
16 code, licensing requirements, or legal operations to residential
17 properties owned and operated by an entity eligible under RCW
18 43.185A.040, which were transferred as described in RCW
19 82.45.010(3)(s) by the parent of a child with developmental
20 disabilities.

21 (3) Preference (~~shall~~) must be given for projects that include
22 an early learning facility.

23 (4) Legislative appropriations from capital bond proceeds may be
24 used only for the costs of projects authorized under subsection
25 (2)(a), (i), and (j) of this section, and not for the administrative
26 costs of the department.

27 (5) Moneys from repayment of loans from appropriations from
28 capital bond proceeds may be used for all activities necessary for
29 the proper functioning of the housing assistance program except for
30 activities authorized under subsection (2)(b) and (c) of this
31 section.

32 (6) Administrative costs associated with application,
33 distribution, and project development activities of the department
34 may not exceed three percent of the annual funds available for the
35 housing assistance program. Reappropriations must not be included in
36 the calculation of the annual funds available for determining the
37 administrative costs.

38 (7) Administrative costs associated with compliance and
39 monitoring activities of the department may not exceed one-quarter of

1 one percent annually of the contracted amount of state investment in
2 the housing assistance program.

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