SENATE BILL REPORT
SB 5998

As Reported by Senate Committee On:
Ways & Means, April 18, 2019

Title: An act relating to establishing a graduated real estate excise tax.

Brief Description: Establishing a graduated real estate excise tax.

Sponsors: Senators Nguyen, Lovelett, Hasegawa, Salomon and Hunt.

Brief History:
Committee Activity: Ways & Means: 4/08/19, 4/18/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Establishes a graduated and marginal real estate excise tax.
- Dedicates additional amounts from real estate excise tax collections to the Education Legacy Trust Account.
- Increases the period of time in which a controlling interest transfer is deemed a sale for purposes of imposing a real estate excise tax.
- Provides the Department of Revenue with authority to deny a tax benefit if a determination is made that the taxpayer was attempting to avoid tax liability.
- Expands existing reporting requirements for transfers of interests in entities that are required to file an annual report with the Secretary of State.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5998 be substituted therefor, and the substitute bill do pass.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

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

Signed by Senators Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Rivers, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Alia Kennedy (786-7405)

Background: Real Estate Excise Tax. The sale of real estate is subject to the real estate excise tax (REET). The tax base is the selling price of the real estate, without any deduction for mortgages, liens, or other debts. The tax is typically paid by the seller. A transfer of controlling interests—50 percent or more over a 12-month period—in entities that own property in Washington is also subject to REET.

The state REET rate is a flat 1.28 percent. The revenue is distributed, through June 30, 2023, as follows:

- 2 percent to the Public Works Assistance Account;
- 4.1 percent to the Education Legacy Trust Account (ELTA);
- 1.6 percent to the City/County Assistance Fund, and
- the remainder to the state general fund.

After June 30, 2023, distributions to ELTA cease and distributions to the Public Works Assistance Account increase to 6.1 percent.

Any penalties assessed for delinquent tax payments are deposited into the Housing Trust Fund. In addition, counties retain 1.3 percent of the state tax collected to cover administrative costs.

Local governments may also impose a REET. Cities and counties are authorized to impose a 0.25 percent REET to finance capital improvements or capital projects specified in a comprehensive plan. A city and county may also impose a 0.5 percent REET for general purposes, so long as the city or county does not impose the optional 0.5 percent retail sales tax. In addition, a county may impose a 1 percent REET to finance the acquisition and maintenance of conservation areas, and 0.5 percent to finance the acquisition, construction, and operation of affordable housing for low to moderate income persons, or persons with special needs.

Education Legacy Trust Account. ELTA was created in 2005. Money in ELTA can only be used for K-12 and higher education. Revenues deposited into ELTA are not considered general state revenues for purposes of the budget stabilization account.

Tax Preference Performance Statement. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Summary of Bill (First Substitute): Graduated REET. Beginning January 1, 2020, the real estate excise tax is imposed at the following rates:

- 1 percent if the selling price is equal to or less than $450,000;
- 1.5 percent on the portion of the selling price that is greater than $450,000 but equal to or less than $900,000;
- 2 percent on the portion of the selling price that is greater than $900,000 but equal to or less than $1,800,000;
- 2.5 percent on the portion of the selling price that is greater than $1,800,000 but equal to or less than $3,600,000; and
- 3 percent on the portion of the selling price that is greater than $3,600,000.

A rate of 1.28 percent is imposed on the sale of undeveloped land, timberland, agricultural land, and water or mineral rights, regardless of selling price.

Beginning on January 1, 2022, and every fourth year thereafter the selling price thresholds are adjusted to reflect the lesser of the growth in the Consumer Price Index for Shelter over the past four years or 5 percent. The Department of Revenue (DOR) must publish updated selling price thresholds by September 1, 2022, and September 1st of every fourth year thereafter. If the growth in Consumer Price Index for Shelter is less than 0 percent, the current selling price thresholds will continue to apply. DOR must report the updated selling price thresholds to the Legislature within six months of publication.

DOR must publish guidance to assist sellers in properly classifying real property on the REET affidavit for purposes of determining the proper amount of tax due under this section. Real property with multiple uses must be classified according to the property's predominant use and DOR's guidance must include factors for use in determining the predominant use of real property. DOR, rather than county treasurers, are responsible for verifying the seller has properly classified real property reported on a REET affidavit.

Revenue Distributions. By December 1st of each year, beginning January 1, 2020, DOR must calculate proceeds from the REET generated during the most recently completed fiscal year and the amount that would have generated during the most recently completed fiscal year, if the rate of this tax had been one and twenty-eight one-hundredths percent for all taxable transactions during the most recently completed fiscal year.

Beginning January 1, 2020, distributions of the estimated amounts if the tax imposed had been one and twenty-eight one-hundredths percent are as follows:

- 2 percent must be deposited in the Public Works Assistance Account;
- 4.1 percent must be deposited in the Education Legacy Trust Account; and
- the remaining amount must be deposited in the general fund.

Beginning July 1, 2023, distributions to the Public Works Assistance Account increases to 6.1 percent and distributions to the Education Legacy Trust Account cease.

All remaining amounts not otherwise distributed must be deposited to the Education Legacy Trust Account.

Controlling Interest Transfers. The term "sale," for the purpose of determine if the REET applies, is modified so the REET applies to the transfer or acquisition within any 36-month period, rather than a 12-month period, of a controlling interest in any entity with an interest in real property in the state.

The definition of "controlling interest" applies to any corporation.

DOR is authorized to disregard transactions it deems were structured to avoid tax liability and instead determine and apply the proper tax treatment.

The authority includes treating multiple sales as a single sale to prevent parties from reducing tax liability when it appears that the parties have engaged in a concerted plan intended from the outset to achieve a reduced effective tax rate, than had the parties collapsed the separate sales into a single sale at the outset.

DOR is encouraged to provide guidance to the public concerning implementation of this authority, whether by rule or otherwise.

The Secretary of State (SOS) must require any entity required to file an annual report with SOS, to disclose any transfer of controlling interest or an interest that amounts to at least one-third of a controlling interest in the entity.

Tax Preference Performance Review. The act is exempt from tax preference performance requirements.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Modifies the graduated real estate excise tax rates and establishes a marginal rate structure so that specified rates are imposed at certain thresholds of the selling price.
- Provides that additional revenues must be deposited into the Education Legacy Trust Account.
- Increases from 12 to 36 months the period of time in which a controlling interest transfer is determined, where the transfer involves multiple transfers of an interest in an entity that, collectively, and the amount to a transfer is 50% or more of the entity.
- Clarifies the definition of "controlling interest" applies to any corporation.
- Provides DOR with explicit authority to disregard tax avoidance transactions.
- Expands existing reporting requirements for transfers of interests in entities that are required to file an annual report with SOS.
- Clarifies that real property with multiple uses must be classified according to the property's predominant use.
- Makes the act exempt from tax preference performance review and expiration.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony: PRO: This bill generates significant revenue that is important to the state. The revenue bills introduced this session are thoughtful tax policy and reflect people's ability to pay. Washington ranks at the bottom in the national in access to state funded preschool. Funding from this bill will help the state expand access to high quality early learning. This is an improvement to Washington's tax code and strengthens the adequacy of revenue to promote social services.

CON: The rate structure in this bill will disproportionately impact residential, commercial, multiunit, and industry properties. Washington has a higher tax burden on businesses relative to other states. The bill will negatively impact housing affordability. The real estate excise tax is already one of the highest in the nation. The bill will generate less revenue than anticipated because of its influence on marketplace transactions. A higher tax will encourage an owner not to sell. Developers consider the impact of real estate taxes prior to commitment. The bill will hurt family owned real estate transaction companies as investments move out of state, which will lead to less revenue for Washington. The bill could benefit from maintaining the current rate on timberland because that industry pays this tax a multiple stages of development.

OTHER: There are concerns with the administration of this bill. Lowering or changing the real estate excise tax rates reduces the amounts retained by the county for administering the tax.

Persons Testifying: PRO: Emily Murphy, Early Learning Action Alliance, Children's Alliance; Donna Patrick, Developmental Disabilities Council; Misha Werschkul, Washington Budget & Policy Center.

CON: Greg Hanon, NAIOP; McKenzie Darr, The Wolf Company; Brian Franklin, PMF Investments; Mark Johnson, Washington Retail; Clay Hill, Association of Washington Business; Patrick Connor, NFIB Washington; Steve Gano, Building Industry Association of Washington; John Ehrenreich, WFPA.

OTHER: Mike Hoover, Washington State Association of Counties.

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