SENATE BILL REPORT
SB 5642

As Reported by Senate Committee On:
Housing & Local Government, February 3, 2022

Title: An act relating to exempting a sale or transfer of real property for affordable housing to a nonprofit entity, housing authority, public corporation, county, or municipal corporation from the real estate excise tax.

Brief Description: Exempting a sale or transfer of real property for affordable housing to a nonprofit entity, housing authority, public corporation, county, or municipal corporation from the real estate excise tax.

Sponsors: Senators Mullet, Rivers and Gildon.

Brief History:
Committee Activity: Housing & Local Government: 1/26/22, 2/03/22 [DPS-WM].

Brief Summary of First Substitute Bill

- Exempts from real estate excise tax the sale or transfer of real property to a nonprofit, cooperative association, housing authority, public corporation, county, or municipal corporation if the property is used for housing for low-income persons.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5642 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Cleveland, Lovelett, Salomon, Sefzik, Trudeau, Warnick and Wilson, J.

Staff: Jeff Olsen (786-7428)

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: Real Estate Excise Tax. Real estate excise tax (REET) is due on the sale of real estate and transfer of controlling interest in an entity that owns real property in the state.

The REET tax base is the selling price of real estate, including the amount of any liens, mortgages, and other debts. In the case of the transfer of controlling interest, the tax base is the true and fair value, or selling price, of the real property transferred. The tax is typically paid by the seller of the property, although the buyer is liable for the tax if it is not paid.

Beginning with sales dated January 1, 2020, the REET rate is:
- 1.1 percent if the selling price is equal to or less than $500,000;
- 1.28 percent on the portion of the selling price that is greater than $500,000, but equal to or less than $1.5 million;
- 2.75 percent on the portion of the selling price that is greater than $1.5 million, but equal to or less than $3 million; and
- 3 percent on the portion of the selling price that is greater than $3 million.

Beginning July 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 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 selling price thresholds are not adjusted for that four-year period.

A rate of 1.28 percent is imposed on the sale of real property classified as timberland or agricultural land, regardless of the selling price.

Tax Preferences. All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives of the tax preference and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference. An automatic ten year expiration date is applied to new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Bill (First Substitute): The sale or transfer of real property to a nonprofit, cooperative association, housing authority, public corporation, county, or municipal corporation is exempt from REET if the grantee intends to use the property for housing for low-income persons and receives, or qualifies for, any of the following real and personal property tax exemptions:
- the property tax exemption provided to nonprofit organizations that provide rental housing or used space to very low-income households;
- the property tax exemption and payments in lieu of taxes provided to housing authorities;
- the property tax exemption for non-profit home-ownership development for low-

income households;
- the immunity or exemption from taxation provided to public corporations; or
- the property tax exemption provided to certain governmental entities, including any county or municipal corporation, for property belonging exclusively the government.

A qualifying grantee that is a county or municipal corporation must record a covenant at the time of transfer prohibiting them from using the property for a purpose other than for low-income housing. The covenant must address price restrictions and household income limits.

Qualifying grantees must certify their intent, by affidavit at the time of transfer, to receive or qualify for the eligible tax exemption within:
- one year if the grantee intends to operate existing housing as affordable housing;
- three years if the grantee intends to substantially rehabilitate the premises; or
- five years if the grantee intends to develop new affordable housing on the property.

If a qualifying grantee fails to receive, or qualify for, a property tax exemption within this timeline, all unpaid REET becomes due plus interest. Interest is calculated from the date of transfer. In cases where the property is transferred to a new qualifying grantee, only that new grantee is liable for unpaid REET and interest, should it become due.

An affidavit must be filed with the DOR upon completion of the sale or transfer of property, including transfers from a qualifying grantee to a different qualifying grantee. The qualifying grantee must provide proof to the DOR once the requirements have been satisfied.

The preference is exempt from the ten year expiration requirement for all new tax preferences.

EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Expands the REET exemption to apply to property for housing for low-income persons, rather than applying to rental housing for low-income persons.
- Counties and municipal corporations are required to record a covenant at the time of transfer that prohibits them from using the property for a purpose other than for low-income housing, and the covenant must address price restrictions and household income limits.
- Qualified cooperative associations are added to the qualifying grantees eligible to receive the exemption.
- An existing property tax exemption for nonprofit home ownership development for low-income households is added to the list of eligible property tax exemptions a grantee must receive or qualify for in order to be eligible for the REET exemption.
- A transfer that occurs between qualifying grantees must be within the original timelines.

- Affidavits must be filed with the DOR upon a completion of a transfer from one qualifying grantee to a different qualifying grantee.
- The effective date is changed to October 1, 2022.

Appropriation: None.

Fiscal Note: Requested on January 21, 2022.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides an incentive to sell properties for affordable housing, giving nonprofit and other affordable housing providers a leg up on getting scarce properties. Affordable housing supply is declining, and rents are increasing, making it very competitive to increase the supply of affordable housing. With the graduated REET, this exemption provides an incentive for the seller of property to sell to a nonprofit housing provider. Nonprofits and housing authorities frequently lose out to the private sector and sales are competitive. This same exemption passed in 2020, but was vetoed, along with other bills, due to the COVID public health emergency. The strategy in this bill pairs well with funding in the capital budget for affordable housing.

Persons Testifying: PRO: Senator Mark Mullet, Prime Sponsor; Andrew Calkins, King County Housing Authority & Association of Washington Housing Authorities; Patience Malaba, Sound Communities/Housing Development Consortium of Seattle-King County; Michone Preston, Habitat for Humanity of Washington State; Joe Thompson, Mercy Housing Northwest; Michele Thomas, Washington Low Income Housing Alliance.

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