

# SENATE BILL REPORT

## SB 5027

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As Reported By Senate Committee On:  
Water, Energy & Environment, February 15, 2005

**Title:** An act relating to the collection of the real estate excise tax upon transfers of water rights.

**Brief Description:** Improving real estate excise tax procedures for taxation of water rights transfers.

**Sponsors:** Senator Jacobsen.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 1/26/05, 2/15/05 [DPS-WM, DNP].

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** That Substitute Senate Bill No. 5027 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

**Minority Report:** Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt and Honeyford.

**Staff:** Margaret King (786-7416)

**Background:** The state real estate excise tax (REET) applies to sales of real property in the state and to transfers in controlling interests for entities that own real property in the state. The tax is owed by the seller and is based on the property's selling price, including any liens, mortgages, or other debts. The amount of REET tax varies because there is both a state and a local rate. The local REET varies by each jurisdiction and ranges from 0.25 percent to 2 percent. The state tax rate is 1.28 percent. After a deduction for administrative costs at the county level, 7.7 percent of the state REET proceeds is deposited to the public works assistance account and the remainder is deposited to the state general fund for the support of common schools. Penalties and interest apply if the tax is not paid within thirty days from the date of the sale.

Generally, when property is transferred or sold, a REET affidavit is filed with the county where the property is located. The affidavit contains the names and addresses of the grantor and grantee, a legal description, parcel number, and selling price. A copy of the REET affidavit is then forwarded to the Department of Revenue (DOR).

For the purposes of the REET, real property includes any interest, estate, or beneficial interest in land or anything affixed to land. Such interests include perfected water rights, which are rights to use water where the water has already been put to beneficial use. In 1994, the Department of Revenue adopted a rule that clarified that REET applied to the sale of water

rights and that a REET affidavit must be completed for the transfer of a water right, whether or not a taxable sale has occurred. An analysis of a sample of 2001 transfer data by the Department of Ecology (DOE), however, indicates that compliance with this requirement is minimal.

In the 2002 budget, the legislature directed the DOE and the DOR to work with county auditors to develop recommendations to improve the administration of water rights ownership information and to integrate such information with real property ownership records. The ensuing study resulted in a 2002 report to the legislature titled "Improving the Administration of Water Right Records and Integrating Records with County Property Information," issued in October 2002.

**Summary of Substitute Bill:** Several of the recommendations issued in the Department of Ecology 2002 study of water right transfers are implemented in the bill.

Within thirty days of receipt of an application for a change of place of use of a storage, diversion or ground water right, the DOE must provide to the DOR a copy of the application. The DOE must also provide to the DOR a copy of the certificate and report of examination where the DOE has approved a change in the place of use of a water right to be transferred separately from the land to which it is appurtenant to another piece of land.

Several exemptions are provided from the state REET for certain types of water right transfers, including the transfer of a water right:

- To the state for administration as a trust water right under the authority of DOE;
- To a municipally owned public water system or to an irrigation district, for the purpose of consolidating water rights into the water supply services provided by the system or district;
- To the United States for the purposes of instream flows, municipal water supply, irrigation, or other beneficial uses; or
- When the right is exchanged for inclusion of the land associated with that right in an area served by a water system when no other compensation is received.

The responsibility for administration of the state REET, with respect to taxable sales of water rights that are transferred separately from the land, is moved from the county level to the DOR. Such transfers or sales are to be reported to the DOR within five days of the sale on forms and according to procedures prescribed the DOR. Anyone intentionally making a false statement on a return form required to be filed with the DOR is guilty of perjury.

**Substitute Bill Compared to Original Bill:** Language clarified regarding department of ecology's duty to provide the department of revenue with a copy of an application for change of place of use for a water right to be transferred separately from the land to which it is appurtenant.

**Appropriation:** None.

**Fiscal Note:** Available

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on August 1, 2005.

**Testimony For:** Much of the proposed process with respect to transfer of water separate from the land is currently in place pursuant to a Memorandum of Understanding between DOE and DOR. There should be some clarification of the current bill language regarding the REET collection process. Transfers exempted from REET in the bill should encourage moving water into the trust water program.

**Testimony Against:** There is concern that the REET on water rights transfers could end up being taxed differently than other collections of REET if centrally located at DOR rather than in the individual counties. The opposition is not to paying REET on water transfers but that Agriculture and Business should not be the only ones that have to pay the REET. There is concern that county assessors will not have correct information for valuation of property with and/or without water rights if REET for water right transfers is collected at DOR rather than the counties.

**Who Testified:** PRO: Joe Stohr, Dept of Ecology.

CON: Kristen Sawin, AWB; John Stuhlmiller, Washington Farm Bureau; Kathleen Collins, Washington Water Policy Alliance.