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HOUSE BILL 2448

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Senn, Tharinger, Chapman, Kilduff, Macri,  
Robinson, Appleton, Kloba, Pollet, Santos, and Tarleton

Read first time 01/09/18. Referred to Committee on Finance.

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 a new section.

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

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

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

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

18            (4) If a review finds that there is an increase of residential  
19   property transfers by parents of a person with developmental  
20   disabilities to a nonprofit or foundation that provides supported  
21   living to persons with developmental disabilities as a result of the

1 relief from this tax preference, then the legislature intends to  
2 extend the expiration date of this tax preference.

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

6 **Sec. 2.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to  
7 read as follows:

8 (1) As used in this chapter, the term "sale" has its ordinary  
9 meaning and includes any conveyance, grant, assignment, quitclaim, or  
10 transfer of the ownership of or title to real property, including  
11 standing timber, or any estate or interest therein for a valuable  
12 consideration, and any contract for such conveyance, grant,  
13 assignment, quitclaim, or transfer, and any lease with an option to  
14 purchase real property, including standing timber, or any estate or  
15 interest therein or other contract under which possession of the  
16 property is given to the purchaser, or any other person at the  
17 purchaser's direction, and title to the property is retained by the  
18 vendor as security for the payment of the purchase price. The term  
19 also includes the grant, assignment, quitclaim, sale, or transfer of  
20 improvements constructed upon leased land.

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

25 (b) For the sole purpose of determining whether, pursuant to the  
26 exercise of an option, a controlling interest was transferred or  
27 acquired within a twelve-month period, the date that the option  
28 agreement was executed is the date on which the transfer or  
29 acquisition of the controlling interest is deemed to occur. For all  
30 other purposes under this chapter, the date upon which the option is  
31 exercised is the date of the transfer or acquisition of the  
32 controlling interest.

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

1 (i) Persons must be treated as acting in concert when they have a  
2 relationship with each other such that one person influences or  
3 controls the actions of another through common ownership; and

4 (ii) When persons are not commonly owned or controlled, they must  
5 be treated as acting in concert only when the unity with which the  
6 purchasers have negotiated and will consummate the transfer of  
7 ownership interests supports a finding that they are acting as a  
8 single entity. If the acquisitions are completely independent, with  
9 each purchaser buying without regard to the identity of the other  
10 purchasers, then the acquisitions are considered separate  
11 acquisitions.

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

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

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

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

19 (d) A cancellation or forfeiture of a vendee's interest in a  
20 contract for the sale of real property, whether or not such contract  
21 contains a forfeiture clause, or deed in lieu of foreclosure of a  
22 mortgage.

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

25 (f) The assignment of property or interest in property from one  
26 spouse or one domestic partner to the other spouse or other domestic  
27 partner in accordance with the terms of a decree of dissolution of  
28 marriage or state registered domestic partnership or in fulfillment  
29 of a property settlement agreement.

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

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

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

38 (j) Any transfer or conveyance made pursuant to a deed of trust  
39 or an order of sale by the court in any mortgage, deed of trust, or

1 lien foreclosure proceeding or upon execution of a judgment, or deed  
2 in lieu of foreclosure to satisfy a mortgage or deed of trust.

3 (k) A conveyance to the federal housing administration or  
4 veterans administration by an authorized mortgagee made pursuant to a  
5 contract of insurance or guaranty with the federal housing  
6 administration or veterans administration.

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

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

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

14 (o) A sale to a regional transit authority or public corporation  
15 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
16 81.112.300.

17 (p) A transfer of real property, however effected, if it consists  
18 of a mere change in identity or form of ownership of an entity where  
19 there is no change in the beneficial ownership. These include  
20 transfers to a corporation or partnership which is wholly owned by  
21 the transferor and/or the transferor's spouse or domestic partner or  
22 children of the transferor or the transferor's spouse or domestic  
23 partner. However, if thereafter such transferee corporation or  
24 partnership voluntarily transfers such real property, or such  
25 transferor, spouse or domestic partner, or children of the transferor  
26 or the transferor's spouse or domestic partner voluntarily transfer  
27 stock in the transferee corporation or interest in the transferee  
28 partnership capital, as the case may be, to other than (i) the  
29 transferor and/or the transferor's spouse or domestic partner or  
30 children of the transferor or the transferor's spouse or domestic  
31 partner, (ii) a trust having the transferor and/or the transferor's  
32 spouse or domestic partner or children of the transferor or the  
33 transferor's spouse or domestic partner as the only beneficiaries at  
34 the time of the transfer to the trust, or (iii) a corporation or  
35 partnership wholly owned by the original transferor and/or the  
36 transferor's spouse or domestic partner or children of the transferor  
37 or the transferor's spouse or domestic partner, within three years of  
38 the original transfer to which this exemption applies, and the tax on  
39 the subsequent transfer has not been paid within sixty days of

1 becoming due, excise taxes become due and payable on the original  
2 transfer as otherwise provided by law.

3 (q)(i) A transfer that for federal income tax purposes does not  
4 involve the recognition of gain or loss for entity formation,  
5 liquidation or dissolution, and reorganization, including but not  
6 limited to nonrecognition of gain or loss because of application of  
7 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
8 revenue code of 1986, as amended.

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

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

30 (s)(i) A qualified transfer of residential property by a legal  
31 representative of a person with developmental disabilities to a  
32 nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the  
33 federal internal revenue code of 1986, as amended, as of the  
34 effective date of this section, that provides residential supported  
35 living for persons with developmental disabilities subject to the  
36 following conditions:

37 (A) The adult child with developmental disabilities of the  
38 transferor of the residential property retains a life estate in the  
39 property and must be allowed to reside in the residence or successor

1 property so long as the placement is safe and appropriate as  
2 determined by the department of social and health services;

3 (B) The title to the residential property is conveyed without the  
4 receipt of consideration by the legal guardian of a person with  
5 developmental disabilities to a nonprofit organization under internal  
6 revenue code section 501(c)(3) with the purpose of providing  
7 residential supported living services to persons with developmental  
8 disabilities;

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

11 (D) The residential property transferred must remain in continued  
12 use for fifty years by the nonprofit organization under internal  
13 revenue code section 501(c)(3) as supported living for persons with  
14 developmental disabilities by the nonprofit organization or successor  
15 nonprofit organization. If the nonprofit organization sells or  
16 otherwise conveys ownership of the residential property the proceeds  
17 of the sale or conveyance must be used to acquire similar residential  
18 property and such similar residential property must be considered the  
19 successor for continued use. The property will not be considered in  
20 continued use if the department of social and health services finds  
21 that the property has failed, after a reasonable time to remedy, to  
22 meet any health and safety statutory or regulatory requirements. If  
23 the department of social and health services determines that the  
24 property fails to meet the requirements for continued use, the  
25 department of social and health services must notify the department  
26 and the real estate excise tax based on the value of the property at  
27 the time of the transfer into use as residential property for persons  
28 with developmental disabilities becomes immediately due and payable  
29 by the nonprofit organization.

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

32 (iii) The Washington state developmental disabilities council  
33 must develop and make available model transfer agreements that  
34 legally transfer a residential property from a parent or guardian of  
35 a developmentally disabled person to a nonprofit or foundation that  
36 provides residential supported living services to persons with  
37 developmental disabilities. The model transfer agreement must meet  
38 the requirements in this subsection (3)(s).

39 (iv) In order to receive an exemption under this subsection  
40 (3)(s) an affidavit must be submitted by the transferor of the

1 residential property and must include a copy of the transfer  
2 agreement and any other documentation as required by the department.

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

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

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

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

22 (b) Rent subsidies;

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

25 (d) Technical assistance, design and finance services and  
26 consultation, and administrative costs for eligible nonprofit  
27 community or neighborhood-based organizations;

28 (e) Administrative costs for housing assistance groups or  
29 organizations when such grant or loan will substantially increase the  
30 recipient's access to housing funds other than those available under  
31 this chapter;

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

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

36 (h) Mortgage insurance guarantee or payments for eligible  
37 projects;

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

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

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

5 (l) Remodeling and improvements as required to meet building  
6 code, licensing requirements, or functionality to residential  
7 properties owned and operated by a nonprofit or foundation that was  
8 transferred as described in RCW 82.45.010(3)(s) by the parent of a  
9 child with developmental disabilities. Priority must be given to  
10 those properties requiring the improvements in order to legally  
11 operate.

12 (3) Preference shall be given for projects that include an early  
13 learning facility.

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

18 (5) Moneys from repayment of loans from appropriations from  
19 capital bond proceeds may be used for all activities necessary for  
20 the proper functioning of the housing assistance program except for  
21 activities authorized under subsection (2)(b) and (c) of this  
22 section.

23 (6) Administrative costs associated with application,  
24 distribution, and project development activities of the department  
25 may not exceed three percent of the annual funds available for the  
26 housing assistance program. Reappropriations must not be included in  
27 the calculation of the annual funds available for determining the  
28 administrative costs.

29 (7) Administrative costs associated with compliance and  
30 monitoring activities of the department may not exceed one-quarter of  
31 one percent annually of the contracted amount of state investment in  
32 the housing assistance program.

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