

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5025

66th Legislature
2019 Regular Session

Passed by the Senate March 11, 2019
Yeas 46 Nays 2

President of the Senate

Passed by the House April 27, 2019
Yeas 98 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5025** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5025

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Das, Warnick, Wilson, C., Zeiger, Fortunato, Palumbo, Saldaña, Kuderer, and O'Ban)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to sales and use and excise tax exemptions for
2 self-help housing development; reenacting and amending RCW 82.45.010;
3 creating a new section; providing an effective date; and providing
4 expiration dates.

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

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

12 (2) The legislature categorizes the 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 provide real estate excise tax relief to developers of self-help
17 housing to encourage continued development of self-help housing.

18 (4) The joint legislative audit and review committee is directed
19 to review:

20 (a) The total number of taxpayers that claimed the tax
21 preference; and

1 (b) The total amount of real estate excise tax revenue that was
2 exempt under this act, annually.

3 (5) In order to obtain this section, the joint legislative audit
4 and review committee may refer to department of revenue data, as well
5 as any other available data source.

6 **Sec. 2.** RCW 82.45.010 and 2018 c 223 s 3 and 2018 c 221 s 1 are
7 each reenacted and amended to 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 transfer of a qualified low-income housing development
31 or controlling interest in a qualified low-income housing
32 development, unless, due to noncompliance with federal statutory
33 requirements, the seller is subject to recapture, in whole or in
34 part, of its allocated federal low-income housing tax credits within
35 the four years prior to the date of transfer.

36 (ii) For purposes of this subsection (3) (s), "qualified low-
37 income housing development" means real property and improvements in
38 respect to which the seller or, in the case of a transfer of a
39 controlling interest, the owner or beneficial owner, was allocated
40 federal low-income housing tax credits authorized under 26 U.S.C.

1 Sec. 42 or successor statute, by the Washington state housing finance
2 commission or successor state-authorized tax credit allocating
3 agency.

4 (iii) This subsection (3)(s) does not apply to transfers of a
5 qualified low-income housing development or controlling interest in a
6 qualified low-income housing development occurring on or after July
7 1, 2035.

8 (iv) The Washington state housing finance commission, in
9 consultation with the department, must gather data on: (A) The fiscal
10 savings, if any, accruing to transferees as a result of the exemption
11 provided in this subsection (3)(s); (B) the extent to which
12 transferors of qualified low-income housing developments receive
13 consideration, including any assumption of debt, as part of a
14 transfer subject to the exemption provided in this subsection (3)(s);
15 and (C) the continued use of the property for low-income housing. The
16 Washington state housing finance commission must provide this
17 information to the joint legislative audit and review committee. The
18 committee must conduct a review of the tax preference created under
19 this subsection (3)(s) in calendar year 2033, as required under
20 chapter 43.136 RCW.

21 (t)(i) A qualified transfer of residential property by a legal
22 representative of a person with developmental disabilities to a
23 qualified entity subject to the following conditions:

24 (A) The adult child with developmental disabilities of the
25 transferor of the residential property must be allowed to reside in
26 the residence or successor property so long as the placement is safe
27 and appropriate as determined by the department of social and health
28 services;

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

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

34 (D) The residential property transferred must remain in continued
35 use for fifty years by the qualified entity as supported living for
36 persons with developmental disabilities by the qualified entity or
37 successor entity. If the qualified entity sells or otherwise conveys
38 ownership of the residential property the proceeds of the sale or
39 conveyance must be used to acquire similar residential property and
40 such similar residential property must be considered the successor

1 for continued use. The property will not be considered in continued
2 use if the department of social and health services finds that the
3 property has failed, after a reasonable time to remedy, to meet any
4 health and safety statutory or regulatory requirements. If the
5 department of social and health services determines that the property
6 fails to meet the requirements for continued use, the department of
7 social and health services must notify the department and the real
8 estate excise tax based on the value of the property at the time of
9 the transfer into use as residential property for persons with
10 developmental disabilities becomes immediately due and payable by the
11 qualified entity. The tax due is not subject to penalties, fees, or
12 interest under this title.

13 (ii) For the purposes of this subsection (3)(t) the definitions
14 in RCW 71A.10.020 apply.

15 (iii) A "qualified entity" is:

16 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
17 of the federal internal revenue code of 1986, as amended, as of June
18 7, 2018, or a subsidiary under the same taxpayer identification
19 number that provides residential supported living for persons with
20 developmental disabilities; or

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

23 (iv) In order to receive an exemption under this subsection
24 (3)(t) an affidavit must be submitted by the transferor of the
25 residential property and must include a copy of the transfer
26 agreement and any other documentation as required by the department.

27 (u)(i) The sale by an affordable homeownership facilitator of
28 self-help housing to a low-income household. The definitions in
29 section 2 of this act apply to this subsection.

30 (ii) The definitions in this subsection (3)(u) apply to this
31 subsection (3)(u) unless the context clearly requires otherwise.

32 (A) "Affordable homeownership facilitator" means a nonprofit
33 community or neighborhood-based organization that is exempt from
34 income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue
35 code of 1986, as amended, as of the effective date of this section
36 and that is the developer of self-help housing.

37 (B) "Low-income" means household income as defined by the
38 department, provided that the definition may not exceed eighty
39 percent of median household income, adjusted for household size, for
40 the county in which the dwelling is located.

1 (C) "Self-help housing" means dwelling residences provided for
2 ownership by low-income individuals and families whose ownership
3 requirement includes labor participation. "Self-help housing" does
4 not include residential rental housing provided on a commercial basis
5 to the general public.

6 NEW SECTION. Sec. 3. This act takes effect October 1, 2019.

7 NEW SECTION. Sec. 4. Section 2 of this act expires January 1,
8 2030.

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