

# HOUSE BILL REPORT

## HB 3163

---

**As Reported by House Committee On:**  
Finance

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

**Brief Description:** Improving the real estate excise tax reporting and collection process on the transfer of water rights.

**Sponsors:** Representatives McIntire, Chandler, Linville, Mastin and Cairnes; by request of Governor Locke.

**Brief History:**

**Committee Activity:**

Finance: 2/9/04, 2/10/04 [DPS].

**Brief Summary of Substitute Bill**

- Modifies interagency notification requirements regarding sales transactions involving the transfer of water rights that occur without the sale of the land to which the water right is attached.
- Transfers the responsibility for the administration of the state real estate excise tax from the counties to the Department of Revenue when water rights are transferred separately from the land.
- Provides exemptions from the state real estate excise tax for certain water right transfers.
- Redirects revenues, from the state general fund to a new account in support of the Department of Ecology water resources program, received from water rights transferred separately from land.

---

**HOUSE COMMITTEE ON FINANCE**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McIntire, Chair; Hunter, Vice Chair; Conway, Morris and Santos.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern and Roach.

**Staff:** Mark Matteson (786-7145).

**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 selling price, including any liens, mortgages, or other debts, of the real property sold. The state tax rate is 1.28 percent. After a deduction for administrative costs at the county level, 7.7 percent of the proceeds is deposited to the public works assistance account and the rest 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. There are also local real estate excise taxes, for which the rates vary by jurisdiction and range from 0.25 percent to 2 percent.

The administration of the state REET begins when, following a sale of real estate, an affidavit is filed along with the applicable tax at the county treasurer's office in the county in which the real property is transferred or sold. The affidavit is required to contain the names and addresses of the grantor and grantee, a legal description of the property, a parcel number, and the property selling price. An exception to this process occurs when the tax is triggered by a transfer in the controlling interest of property; in this case, the tax and affidavit are reported directly to the 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 if the water has already been put to beneficial use. In the transfer of such a right, remittance of the tax and accompanying affidavit are generally required. However, an analysis of a sample of 2001 transfer data by the Department of Ecology (DOE) 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 for integrating such information with real property ownership records. The ensuing study, issued in October 2002, included the following recommendations:

1. With respect to the transfer of water rights separate from land, relocate the administrative responsibility under the state REET from the county treasurers to the DOR for evaluating the taxable nature of the transfer and for providing taxpayers with notice. For these transactions, the DOR would be the central point for the remittance of tax and the processing of the affidavits.
2. Exempt several types of water rights transfers from the state REET, since the tax may otherwise serve as a disincentive for compliance with other legislative policies and might result in substantial administrative costs. The transfer types are:
  - Transfer from a private landowner to the state trust waters;

- Transfer or consolidation of water rights from individuals or individual water systems to private or municipal water systems or irrigation districts;
  - Assignment of water permits from individuals to water systems or irrigation districts;
  - Assignment of water permits from a private water system to a government water system or irrigation district; and
  - Unperfected ground water rights transferred separate from the land.
3. Improve notice by the DOE to the DOR with respect to potential sales transactions involving the transfer of water rights separately from the sale of land. Notification would occur when the DOE:
- First receives an application from a water right owner to change the place of use of a water right or to consolidate water;
  - Receives an application, filed either directly with the DOE or through a Water Conservancy Board, to change the place of use of a water right or to consolidate water rights;
  - Receives notice that a Water Conservancy Board has approved an application to change the place of use of a water right or to consolidate water rights;
  - Receives an application for change to consolidate permit exempt water uses; or
  - Receives assignments of permits authorizing the development of a privately owned water supply system, or of authorization to change any aspect of a privately owned water supply system.

---

**Summary of Substitute Bill:**

Several of the recommendations issued in the Department of Ecology 2002 study of water right transfers are implemented. In addition, a new account is created and revenue from the transfer of water rights that are separate from sales of land is redirected to the account from the state general fund and public works assistance account to support the DOE water resources program.

The DOE is directed to provide the DOR with the record of decision of a transfer involving the consolidation of water rights or a change in the place of use made through an application to a Water Conservancy Board or to the DOE. The DOE must also provide the DOR with the status of any approval of such a transfer at the end of the time period allowed for appeal of the decision.

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 sales are to be reported to the DOR within five days of the sale on a form and according to procedures prescribed the DOR.

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

1. To the state for administration as a trust water right under the authority of DOE;

2. 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;
3. To the United States for the purposes of instream flows, municipal water supply, irrigation, or other beneficial uses; or
4. 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 Water Rights Permit Processing account is created. Revenue from the transfer of water rights made separately from the sale of land is deposited to the account to support the water resources program at the DOE.

**Substitute Bill Compared to Original Bill:**

Makes a technical correction to modify existing provisions that govern the disposition of state REET revenues to allow those revenues from water rights transfers made separately from land to be deposited into the new account.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on July 1, 2004.

**Testimony For:** We are always looking for opportunities to connect activities concerning water with the funding of the water programs. This is not a new tax. This bill will improve the compliance and help sustain the water resources program.

Our interest relates to the processing of water rights, which is complex. To provide for consistency, administration should be the responsibility of the DOR. County treasurers or auditors do not have the resources to track water rights ownership or determine the taxable nature of the transaction.

There has been low compliance with the REET here. The DOR is happy to assume the administrative responsibility concerning this aspect of the REET. There are four exemptions that have been included to make sure the application of the REET to water rights transfers is not contrary to legislative policy and public interest.

The Realtors have some concern with this proposal since it diverts some of the funds from the current authorized uses.

**Testimony Against:** None.

**Persons Testifying:** (In support) Jim Waldo, Office of the Governor; Rose Bowman, Washington State Association of County Treasurers; and Julie Sexton, Department of Revenue.

(Concerns) Larry Stout, Washington Association of Realtors.

**Persons Signed In To Testify But Not Testifying:** None.