HOUSE BILL REPORT
SHB 1805

As Passed Legislature

Title: An act relating to increasing the homestead exemption amount.

Brief Description: Increasing the homestead exemption amount.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Morrell, Lantz, Linville, Wallace, Rodne, Conway, Kessler, Hudgins, Hunt, Chase, Hasegawa, VanDeWege, Campbell, Ericks, Green, Simpson and Schual-Berke).

Brief History:

Committee Activity:

Judiciary: 2/9/07, 2/21/07 [DPS].

Floor Activity:

Passed House: 3/10/07, 86-11.
Senate Amended.
Passed Senate: 4/11/07, 48-1.
House Concurred.
Passed House: 4/17/07, 85-13.
Passed Legislature.

Brief Summary of Substitute Bill

- Increases the value of the real property homestead exemption limit to $125,000.
- Exempts debts for sales and use taxes that are collected and not remitted to the Department of Revenue from the homestead exemption.
- Provides that a tax warrant for unpaid taxes becomes a lien on the value of the homestead property in excess of the homestead exemption limit from the time the tax warrant is filed in superior court.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Rodne, Ranking Minority Member; Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Warnick, Assistant Ranking Minority Member and Ahern.

Staff: Edie Adams (786-7180).

Background:

Homestead Exemption: Certain property of a debtor is protected by the homestead exemption. The homestead exemption protects a debtor's equity in the real or personal property that the debtor uses or plans to use as a residence. The exemption is limited to the lesser of: (1) $40,000 if the homestead consists of real property, or $15,000 if the homestead consists of personal property; or (2) the total net value of the homestead property. Net value is defined as the market value of the property less all liens and encumbrances that are senior to the judgment being executed upon.

The current homestead exemption amount of $40,000 for real property has been in effect since 1999, when the amount was increased from $30,000. The availability of a homestead in personal property was established in 1993 at an amount of $15,000 and has not been changed since.

The homestead exemption is not available against an execution or forced sale to satisfy certain kinds of judgments, including judgments on mortgages or deeds of trust on the property; construction liens, laborer's liens, and other liens arising out of and against the particular property; child support or spousal maintenance obligations; debts owed to the state for the recovery of medical assistance costs; or condominium or homeowners' association liens.

Sales and Use Tax Collections: The sales tax is paid on each retail sale of most articles of tangible personal property and certain services. The use tax applies to the privilege of using items of tangible personal property when retail sales tax has not been collected. Both the state and local governments impose sales and use taxes; the state rate is 6.5 percent and the average local rate is about 2 percent statewide. State law requires registered sellers to hold the proceeds of sales and use taxes in trust until paid to the Department of Revenue (Department). The taxes are due on a monthly basis.

A seller that collects sales or use taxes and converts the funds to his or her own personal use is guilty of a gross misdemeanor. A seller that has collected any such tax and fails to pay it to the Department, even if the failure is the result of conditions beyond his or her control, is liable for the amount of tax due.

Remedies for the Collection of Unpaid Taxes: The Department is authorized to issue a warrant for taxes and fees if not paid within 15 days of the due date. The Department is then required to file a copy of the warrant in the superior court of any county in which the taxpayer is believed to have real or personal property. When the warrant is entered into the judgment docket, it becomes a tax lien. The filed warrant becomes a specific lien upon all personal property used in the conduct of the business and a general lien against all other real and personal property owned by the taxpayer, such as the taxpayer's home and nonexempt personal vehicles. However, under the homestead exemption law, a judgment does not become a lien on the debtor's homestead property in excess of the homestead exemption limit unless the judgment is recorded with the county auditor to perfect the lien, which costs $29 per recording.

Summary of Substitute Bill:

The value of the real property homestead exemption limit is increased to $125,000. Manufactured homes are specifically added as a type of homestead property in the provision that sets the exemption limit.

The homestead exemption does not apply to debts for sales and use taxes that are collected and held in trust by the property owner but not remitted to the Department.

A Department tax warrant for unpaid taxes becomes a lien on the value of the homestead property in excess of the homestead exemption limit from the time the tax warrant is filed in superior court.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is very important, especially for low income or older persons, and people who have unforeseen medical problems that lead to medical bankruptcies. Because of the inadequate homestead exemption, these people will lose their homes in the bankruptcy.

It is a requirement of the state Constitution that we have a reasonable homestead. The purpose of the homestead is to protect families and children from losing the benefit of home ownership in hard times. In 1881, when the homestead exemption was first established, the exemption amount covered the entire house. In recent years the homestead has not kept up with the increased values of homes and therefore does not serve its purpose of protecting home ownership.

Congress looked at this issue when amending the bankruptcy laws and concluded that states have the unfettered right to raise the exemption to $125,000. Washington's $40,000 amount is less than half the amount in the neighboring states of Idaho, Montana, and Alaska, where the average value of homes is less than in Washington.

This bill will not have an adverse impact on the state. The effect of the bill is to encourage savings in the home at a time when the savings rate has been really low. The bill will not discourage home lenders. Studies show that the increase will support that type of lending. There is substantial evidence that an increase in the homestead exemption does not hurt the unsecured creditor community. Homeowners are more likely to have jobs and wage garnishment is the most effective way for unsecured creditors to collect. Many states have totally unlimited homestead exemptions, and the credit industry has not dried up in those states.

This increase is long overdue. There have been substantial increases in property values and there needs to be a substantial increase in protections for homeowners. This proposal went through a long and vigorous debate in the Creditor-Debtor Section of the Bar Association. The Board of Governors of the Bar Association has twice strongly endorsed the increase to $125,000.

(Opposed) There has been no analysis to support the figure of $125,000. In 1998, the homestead was 25 percent of the median home value. This increase will make it closer to 50 percent, which changes the policy of the exemption. The $125,000 figure is arbitrary. The Bar Association only approved it because the federal law capped the amount at that level.

You can't amend the homestead exemption, which is the centerpiece of the exemption scheme, without dealing with all of the other issues. This change will cause dire problems. Currently, unmarried couples are able to have both parties each claim the exemption in the same home. Under this bill, they would each be able to claim a $125,000 exemption. The California laws deal with this by applying the exemption on a household basis. The California exemptions aren't up to $150,000 for everyone. They have a tiered exemption scheme, which makes more sense.

The homestead exemption only comes into play if there is a bankruptcy or a judgment. A judgment doesn't become a lien on the property unless there is excess equity over the homestead lien. New loans on the home can become senior liens to a judgement that hasn't become a lien on the property.

Any change in the homestead exemption will have a retroactive effect and will impact any judgment over the past 20 years that is still in effect. There ought to be an increase in the exemption, but $125,000 is excessive. Instead, you should do a study on this issue.

Persons Testifying: (In support) Martin Snodgrass and Fred Corbit, Washington State Bar Association; and David Hill.

(Opposed) Kathy Ellis; Patrick Layman; and Mark Gjurasic and Ray Henning, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.