HOUSE BILL REPORT
ESSB 5998

As Passed House:
April 27, 2019

Title: An act relating to establishing a graduated real estate excise tax.

Brief Description: Establishing a graduated real estate excise tax.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Nguyen, Lovelett, Hasegawa, Salomon and Hunt).

Brief History:
Committee Activity:
Finance: 4/27/19 [DP].
Floor Activity:
Passed House: 4/27/19, 56-42.

Brief Summary of Engrossed Substitute Bill

- Modifies the state real estate excise tax rate structure.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Morris, Orwall, Springer and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Stokesbary and Vick.

Staff: Richelle Geiger (786-7139).

Background:

Real estate excise tax (REET) is due on the sale of real estate and transfer of controlling interest in an entity that owns real property in the state. The tax base is the selling price of real estate, including the amount of any liens, mortgages, and other debts. In the case of the transfer of controlling interest, the tax base is the true and fair value, or selling price, of the

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real property transferred. The tax is typically paid by the seller of the property, although the buyer is liable for the tax if it is not paid.

The state REET rate is 1.28 percent.

The state REET revenue are distributed as follows:
- 2 percent to the Public Works Assistance Account (PWAA) through June 30, 2023. After that date, 6.1 percent to the PWAA;
- 4.1 percent to the Education Legacy Trust Account (ELTA) through June 30, 2023. After that date, no revenue distribution to the ELTA;
- 1.6 percent to the City-County Assistance Account; and
- the remainder to the State General Fund.

Any penalties assessed for delinquent REET payments are deposited into the Housing Trust Fund.

Counties collect the state REET on behalf of the state and retain 1.3 percent of the collections to offset administrative costs.

Summary of Bill:

The state REET rate structure is modified. Beginning on January 1, 2020, through December 31, 2022, the rate is:
- 1.1 percent on the portion of the selling price equal to or less than $500,000;
- 1.28 percent on the portion of the selling price that is greater than $500,000 and equal to or less than $1.5 million;
- 2.75 percent on the portion of the selling price that is greater than $1.5 million but equal to or less than $3 million; and
- 3 percent on the portion of the selling price that is greater than $3 million.

The new rate structure does not apply to timberland and agricultural land. The rate for these types of property would continue to be 1.28 percent, the same rate under current law.

Beginning on January 1, 2023, and every four years thereafter the selling price thresholds are adjusted to reflect the lesser of the growth in the Consumer Price Index for Shelter (CPI-Shelter) over the past four years or 5 percent.

The Department of Revenue (DOR) is directed to:
- calculate the updated thresholds on July 1, immediately prior to the effective date of the new thresholds;
- publish the updated thresholds on September 1, immediately prior to the effective date of the new thresholds; and
- report the updated thresholds to the fiscal committees of the Legislature within six months of the effective date of the new thresholds.

If the growth in CPI-Shelter is less than 0 percent, the current selling price thresholds will continue to apply.

The state REET revenue distribution is modified:
- 1.7 percent to the PWAA through June 30, 2023. After that date, 5.2 percent to the PWAA;
- 1.4 percent to the City-County Assistance Account;
- 79.4 percent to the State General Fund; and
- the remainder to the ELTA.

The term "sale," for the purpose to determine if the REET applies, is modified so the REET applies to the transfer or acquisition within any 36-month period, rather than a 12-month period, of a controlling interest in any entity with an interest in real property in the state. The definition of "controlling interest" applies to any corporation.

The DOR is authorized to disregard transactions it deems were structured to avoid tax liability and instead determine and apply the proper tax treatment. The authority includes treating multiple sales as a single sale to prevent parties from reducing tax liability when it appears that the parties have engaged in a concerted plan intended from the outset to achieve a reduced effective tax rate, than had the parties collapsed the separate sales into a single sale at the outset. The DOR is encouraged to provide guidance to the public concerning implementation of this authority, whether by rule or otherwise. The Secretary of State (SOS) must require any entity required to file an annual report with the SOS to disclose any transfer of controlling interest or an interest that amounts to at least one-third of a controlling interest in the entity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) Housing foreclosures due to tax liens continue to increase even as foreclosures due to mortgage decline. Senior citizens are the most susceptible to having their homes foreclosed upon. An amendment was offered to the bill that would provide important funds to support homeowners under the threat of foreclosure, including funding for counseling services and legal aid.

(Opposed) The increased REET rates on high valued property will negatively impact high density, affordable housing developments. If the goal is to encourage more multifamily housing projects, the bill should be amended to exempt multifamily housing projects from the increased REET rates.

The increased tax rate will disincentive development, which negatively impacts the state economy and revenue.

The tiered REET rate structure is inequitable. One way to address this would be to establish a flat rate for all transactions over $500,000.

The tax structure in the bill is cumbersome. It would be easier to administer if the rates were flat.

The increased REET rates disproportionally impact businesses. Washington already has a high tax burden on businesses and this bill exacerbates the problem.

The bill should also exempt vacant land from the REET rate increase. Any increased cost to buy vacant land will be rolled into the cost to the buyer of the structure that is built on the property.

(Other) The PWAA funds cost-effective loans for local governments to complete capital projects while freeing up state bonding capacity. There is currently $10 billion in unmet need for water and sewer systems across the state.

The City County Assistance Account provides support to the smallest cities with the smallest tax bases.

The total amount of funds that will be deposited in the City County Assistance Account and the PWAA are slightly increased under this bill. The distributions should be kept to as close to current law as possible.

Counties collect an administrative fee on all REET transactions and under this bill, counties with relative low property value will receive fewer funds than they do now. This should be remedied with an amendment.

The bill directs the DOR to determine the primary land use to determine if the transaction should be subject to the new rate structure or not. Determining land use is a highly subjective process. This could be addressed in part by an amendment to direct the DOR to assess the land use code for transactions with multiple parcels by the percent of land used for what purpose.

Undeveloped land should be included with the land use types that are exempt from the new REET rate structure.

Persons Testifying: (In support) Majken Ryherd, Statewide Poverty Action Network.

(Opposed) Greg Hanon, NAIOP; Clay Hill, Association of Washington Business; and Jan Himebaugh, Building Industry Association of Washington.

(Other) Mara Machulsky, Public Works Board; Candice Bock, Association of Washington Cities; Mike Hoover, Washington State Association of Counties; Bill Clarke, Washington Realtors; and Scott Richards, Nature Conservancy.

Persons Signed In To Testify But Not Testifying: None.