HOUSE BILL REPORT
HB 1628

As Reported by House Committee On:
Local Government

Title: An act relating to increasing the supply of affordable housing by modifying the state and local real estate excise tax.

Brief Description: Increasing the supply of affordable housing by modifying the state and local real estate excise tax.

Sponsors: Representatives Chopp, Macri, Peterson, Alvarado, Taylor, Reed, Pollet, Lekanoff, Fitzgibbon, Berg, Riccelli, Davis, Street, Ramel, Duerr, Senn, Doglio, Cortes, Stonier, Gregerson, Mena, Berry, Fosse, Goodman, Bergquist, Slatter, Ormsby, Thai, Farivar, Simmons and Wylie.

Brief History:
Committee Activity:
Local Government: 2/7/23, 2/8/23, 2/10/23 [DPS].

Brief Summary of Substitute Bill

- Adds a new state real estate excise tax threshold of $5,000,000 on January 1, 2025, with the portion of the selling price that is above the threshold taxed at a rate of 4 percent.
- Provides for the distribution of the increase in revenue from the new threshold over what would have been collected had the new threshold not been imposed, including to a newly created Developmental Disabilities Trust Account that can be used for housing support for individuals with developmental disabilities.
- Allows a county or city to impose an additional 0.25 percent real estate excise tax for the construction and support of affordable housing beginning January 1, 2024.
- Removes the expiration date on the ability to use certain local government real estate excise tax funds for facilities for those

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experiencing homelessness or for affordable housing, and removes a $1,000,000 limit on the annual use of such funds in larger jurisdictions.

- Removes certain restrictions on the permitted uses of revenue from specified local government real estate excise taxes, and allows for the councilmanic imposition of a 0.25 percent real estate excise tax by counties, and cities within those counties, that choose to plan under the Growth Management Act instead of requiring voter approval.
- Creates a real estate excise tax exemption for certain sales or transfers of properties that qualify for a property tax exemption that will be used for a community purpose.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Berg and Riccelli.

Minority Report: Do not pass. Signed by 3 members: Representatives Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Griffey.

Staff: Kellen Wright (786-7134).

Background:

Excise Taxes.
Excise taxes are taxes imposed on a specific good or activity. Cigarettes, syrup, and aircraft are all subject to excise taxes in Washington.

So too is real estate. The sale or transfer of a beneficial interest in real estate for consideration is subject to a state excise tax, and such a sale or transfer may be taxed by counties and cities (local governments) as well.

State Real Estate Excise Tax.
The state imposes a graduated real estate excise tax on the sale of property that is not timberland or agricultural land. The portion of the selling price up to $525,000 is taxed at 1.1 percent; the portion that is more than $525,000 but less than or equal to $1,525,000 is taxed at 1.28 percent; the portion that is more than $1,525,000 but less than $3,025,000 is taxed at 2.75 percent; and any portion of the selling price over $3,025,000 is taxed at 3 percent. A property that sold for $3,525,000 would therefore be subject to $74,825 in taxes: $5,775 for the first $525,000 portion of the selling price; $12,800 for the next $1,000,000; $41,250 for the next $1,500,000; and $15,000 for the final $500,000.

The Department of Revenue is required to adjust the first price threshold every four years by the lesser of the growth in the Consumer Price Index for shelter or 5 percent, rounded to the nearest thousand dollars. The Consumer Price Index is a measure of the change over time in prices for certain goods, and is often used as a measure of inflation. If the change in the Consumer Price Index for shelter is zero or negative, then the price threshold must remain the same. If the first threshold does increase, then the remaining thresholds must increase by the same amount. The first update to the price thresholds occurred on January 1, 2023; it resulted in an increase of 5 percent to the first price threshold, which translated to an increase of $25,000 at each threshold. Timberland and agricultural land is taxed at a flat rate of 1.28 percent.

Until June 30, 2023, the revenue from the state real estate excise tax is deposited as follows: 1.7 percent into the Public Works Assistance Account, which is used to make loans and grants to local governments for public works projects; 1.4 percent into the City-County Assistance Account, which provides funding to local governments based on their size and how their sales and property tax revenue compare to the statewide average; 79.4 percent to the State General Fund; and 17.5 percent into the Education Legacy Trust Account, which is used to support education. After July 1, 2023, the portion going to the Public Works Assistance Account increases to 5.2 percent, while the amount going to the Education Legacy Trust Account decreases to 14 percent.

The tax imposed is due at the time of sale, and is subject to monthly interest if paid more than a month after the sale. The tax is a lien on the property, and its payment is the responsibility of the seller. The Department of Revenue may foreclose on the property if the tax remains unpaid.

Local Government Real Estate Excise Tax.
Local governments are also authorized to impose real estate excise taxes. There are five varieties of real estate excise tax that counties are authorized to impose, three of which can also be imposed by cities. The taxes differ both in the rate that may be imposed and in the uses to which the revenue can be put.

First 0.25 Percent Real Estate Excise Tax.
First, any local government can impose a real estate excise tax of up to 0.25 percent. This tax is imposed by the legislative authority of the local government. This revenue can be used in two ways, depending on the size of the local government and on whether the county or city plans under the Growth Management Act (GMA). If the local government has either a population of 5,000 or less, or does not plan under the GMA, then it can use the revenue for any capital purpose identified in a capital improvements plan or for local capital improvements. If the local government has more than 5,000 people and plans under the GMA, the revenue can only be used for certain capital facilities specified in the capital facilities element of the comprehensive plan and for housing relocation assistance.

Until December 31, 2023, a local government can annually use the greater of $100,000 or 35 percent of the revenue for the maintenance of, operation of, and service support for existing capital projects, including the provision of services to residents of affordable housing or shelter units. After 2023, the local government can use the greater of $100,000 or 25 percent of the revenue, up to $1,000,000, for maintenance of existing capital projects if the local government writes a report that:

- demonstrates that the local government has sufficient funding to pay for the capital projects over the next two years;
- demonstrates that the local government has not adopted requirements related to the listing or sale of property, or to requiring landlords to provide improvements or modifications to property that are not required to address an immediate threat to health or safety unless specifically authorized by state or federal law;
- identifies how real estate excise tax funds were spent in the previous two years;
- identifies how the funds will be spent in the succeeding two years; and
- identifies what proportion of the funds for capital projects come from real estate excise taxation as compared to other sources.

<u>Second 0.25 Percent Real Estate Excise Tax</u>.
The second local government real estate excise tax can only be imposed by local governments planning under the GMA. This tax can be imposed legislatively if the local government is required to plan under the GMA, as 18 counties are. In the 10 counties that have chosen to plan under the GMA, but that are not required to, the tax can only be imposed after voter approval. It cannot be imposed by the remaining 11 counties. This tax can be imposed at a rate of up to 0.25 percent of the selling price.

These funds can be used for financing certain capital infrastructure projects identified in the capital facilities element of the comprehensive plan; for parks; and, until January 1, 2026, and under certain conditions, for the acquisition, construction, repair, or improvement of facilities for those experiencing homelessness and for affordable housing projects. The funds available for use related to facilities for those experiencing homelessness and affordable housing projects are limited to the greater of $100,000 or 25 percent of the revenue, up to $1,000,000. This dollar limitation does not apply if the local government used the revenue from this second real estate excise tax to provide housing facilities for the homeless prior to June 30, 2019. A local government must also demonstrate that it has sufficient funds during the next two years for its capital infrastructure projects in order to use the funds for homelessness or affordable housing purposes.

Until December 31, 2023, the greater of $100,000 or 35 percent of the revenue can also be used for maintenance of existing capital infrastructure projects and for capital projects for which the first 0.25 percent tax could be used. After 2023 the amount that can be used for these purposes is the greater of $100,000 or 25 percent of the revenue, up to $1,000,000, and the revenue can only be used upon the completion of a report with the same information that was required to use a portion of the first 0.25 percent for maintenance.

Real Estate Excise Tax in Lieu of Sales Tax.
The state has authorized local governments to impose two 0.5 percent sales and use taxes. A local government that has not imposed the second of these taxes can instead impose an additional real estate excise tax of up to 0.5 percent. Any imposition of this tax, or increase in the rate of the tax, can be subjected to a referendum within a short time after the passage of the ordinance imposing or increasing the rate of the tax if at least 15 percent of the registered voters within the local government sign a referendum petition.

These first three real estate excise tax options share some traits that the fourth and fifth do not. With each of the first three options, the responsibility for paying the tax falls on the seller of the property. Additionally, with each of the first three options, a county can only impose the tax in the unincorporated areas of the county, while a city can only impose the tax within city limits.

Conservation Area and Affordable Housing Real Estate Excise Tax.
The fourth and fifth real estate excise taxes can only be imposed by counties. The first of these final two taxes can be imposed at a rate of up to 1 percent. Revenue from the tax can be used only for the purchase and maintenance of conservation areas. A conservation area is land or water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value. The tax can only be imposed if approved by voters. The payment of this tax is the obligation of the purchaser.

The final tax can only be imposed in a county that imposed the maximum conservation area real estate excise tax prior to January 1, 2003. The imposition of the tax also requires voter approval. This tax can be imposed at a rate of up to 0.5 percent, and the revenue must be used exclusively for the development of affordable housing through grants and loans. The county legislative authority can determine the division of responsibility for paying the tax between the buyer and the seller, though at least half of the obligation must be the buyer's.

The five real estate excise tax options share some common characteristics. In each of the options, the payment is due at the time of the sale, and the tax operates as a lien on the property. Additionally, with each tax, if the tax is not paid, the local government can foreclose on the property.

Real Estate Excise Tax Exemptions.
Some transfers of property are exempted from being considered a sale. Because these transfers are not considered sales, they are not subject to real estate excise taxation. These exemptions include, among other things, property transfers made by gift or through inheritance, transfers made pursuant to a dissolution of marriage, or the transfer of a mortgage interest in property.

Certain property sales or transfers related to low-income housing are also exempt from being considered, and thus taxed as, sales. These exemptions cover low-income housing developments that qualify for federal low-income housing tax credits or for tax credits from the Washington State Housing Finance Commission. The exemptions also include sales of self-help housing to households that have an income of less than 80 percent of the median income, adjusted for house size, of the county in which the dwelling is located.

Also exempted are sales or transfers to certain entities that use the property for low-income housing, as long as certain conditions are satisfied. First, the property must qualify for a property tax exemption related to certain properties owned by a qualified entity. A qualified entity is a nonprofit organization that provides low-income rental housing or develops properties for sale to low-income households; a housing authority; a public corporation; or the United States, Washington, a county, or a municipal corporation. Second, the property must actually be used as housing within one to five years by a household that has an income of less than 80 percent of the median income, adjusted for house size, of the county in which the dwelling is located, with the time frame dependent on whether the organization is operating existing housing, renovating housing, or constructing new housing on the site. If this deadline is missed, then the organization must pay the tax that would have been due at the time of the transfer, plus interest.

<u>The Washington Housing Trust Fund, The Apple Health and Homes Account, and The Affordable Housing for All Account</u>.
The Washington Housing Trust Fund is used to provide grants and loans for local government, housing authority, behavioral health service organization, nonprofit community, tribal, and regional or statewide housing assistance projects that will provide housing to those with special housing needs and with incomes at or below 50 percent of the median family income for the county or standard metropolitan area where the project is located. It is administered by the Department of Commerce.

The Apple Health and Homes Account is also administered by the Department of Commerce. It is used to support permanent supportive housing programs.

The Affordable Housing for All account is used to fund affordable housing programs.

Summary of Substitute Bill:

Beginning January 1, 2025, a new threshold is added for state real estate excise tax. This tax applies at a rate of 4 percent to the portion of the sale price that is over $5,000,000. The increased revenue of this portion of the state real estate excise tax over what would have been collected without the new price threshold must be deposited separately from the other portions. The revenue must be deposited as follows: 30 percent to the Washington State Housing Trust Fund, 30 percent to the Apple Health and Homes Account, 15 percent to a new Developmental Disabilities Trust Account, and 25 percent to the Affordable Housing for All account for operations, maintenance, and service for permanent supportive housing.

The Developmental Disabilities Housing and Services Account is created. This account may be used for providing grants and forgivable loans to housing programs to support people with developmental disabilities. These grants and loans can be used for operations and maintenance costs, housing-related services, technical assistance to nonprofit organizations serving or housing populations with intellectual or developmental disabilities, and rental subsidies.

Beginning on January 1, 2024, the legislative authority of a local government may impose an additional real estate excise tax at a rate of up to 0.25 percent. If a city does not impose the tax at the full rate by June 30, 2024, the county may impose the tax within the city up to a combined rate of 0.25 percent. At least half of the revenue from the tax must be used for the capital construction or acquisition of affordable housing, or for associated infrastructure costs; any remainder may be used for operations, maintenance, and services related to the affordable housing, and may only be used for permanent housing, rather than temporary, transitional, or shelter housing. Housing is affordable if the monthly costs of the housing do not exceed 30 percent of the income of a household making 60 percent of the county median income, adjusted for housing size, if the housing is rental housing; or do not exceed 35 percent of the income of the same household if the housing is owner-occupied.

Beginning on January 1, 2024, revenues from the first 0.25 percent local real estate excise tax may be used for any capital purpose identified in a capital improvements plan, local capital improvements, certain capital facilities specified in the capital facilities element of the comprehensive plan, and housing relocation assistance, regardless of the size of the local government or its planning status under the GMA. Revenue from the first 0.25 percent local real estate excise tax can be used for capital projects that the second 0.25 percent local real estate excise tax could be used for, including use related to facilities for those experiencing homelessness and for affordable housing projects. Subject to the local government writing the necessary report, the local government may annually use the greater of $100,000 or 35 percent of the first 0.25 percent local real estate excise tax revenue for the maintenance of, operation of, and service support for existing capital projects, including the provision of services to residents of affordable housing or shelter units.

Beginning on January 1, 2024, revenues from the second 0.25 percent local real estate excise tax may be used for capital projects identified in a capital facilities element of a comprehensive plan, on facilities for those experiencing homelessness or affordable housing, or for capital projects that the first 0.25 percent local real estate excise tax could be used for. The expiration date of January 1, 2026, for the use of revenue from the second of the 0.25 percent local government real estate excise tax options on facilities for those experiencing homelessness or for affordable housing projects is removed. Up to $100,000 or 25 percent of the revenue from this tax option, whichever is greater, can be used on homeless or affordable housing facilities; and the $1,000,000 cap on the maximum amount of the revenue that could be used in this way is removed. Subject to the local government writing the necessary report, the local government may also use the greater of $100,000 or 35 percent of the revenue from this local real estate excise tax on the maintenance of, operation of, and service support for existing capital projects, including capital projects for which the first 0.25 percent local real estate excise tax could be used.

The legislative authority of local governments that choose to plan under the GMA may impose the second 0.25 percent local real estate excise tax without voter approval.

Beginning January 1, 2024, the sale of any portion of an affordable housing development by a qualified entity to an organization that meets the requirements for a property tax exemption as a nonprofit organization, housing authority, or public corporation for use for a community purpose is exempt from real estate excise taxation. A community purpose includes, but is not limited to, the provision of services to affordable housing development tenants, health clinics, senior day cares, food banks, community centers, and early learning facilities.

Substitute Bill Compared to Original Bill:

The substitute bill:

- renames the Developmental Disabilities Trust Account to the Developmental Disabilities Housing and Services Account;
- allows counties and cities that impose the new real estate excise tax for use on capital construction or acquisition of affordable housing costs of new units of affordable housing and facilities to also use revenue from the tax on infrastructure costs associated with such housing and facilities;
- allows counties that are not required to plan under the GMA, but that have chosen to do so, and the cities within those counties, to impose the second 0.25 percent local government real estate excise tax with councilmanic authority, rather than with voter approval;
- allows revenue from the second 0.25 percent local government real estate excise tax to be used for any capital project for which the first 0.25 percent local government real estate excise tax could be used;
- removes differences in allowed uses of the first 0.25 percent local government real estate excise tax based on the size and GMA planning-status of the county or city;
- allows revenue from the first 0.25 percent local government real estate excise tax to be used for any capital project for which the second 0.25 percent local government real estate excise tax could be used, including for facilities for those experiencing homelessness and affordable housing projects;
- allows for the use, past December 31, 2023, of the greater of 35 percent or $100,000 of the revenue from the first 0.25 percent local government real estate excise tax for the maintenance of, operation of, or service support for existing capital projects, including the provision of services to residents of affordable housing or shelter units; and
- allows for the use, past December 31, 2023, of the greater of 35 percent or $100,000 of the revenue from the second 0.25 percent local government real estate excise tax for the maintenance of, operation of, or service support for existing capital projects.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) There is a housing crisis in Washington, with a shortage of affordable housing, particularly for those with lower incomes. The state needs 1 million new homes, and at least 500,000 of those need to be affordable. These affordable units are those that we need the most, and the market will not provide them at that low-income level. Affordable housing relies on limited public funding, and resources are currently insufficient. Too few units are being built, and we are not meeting our targets. Fewer and fewer units can be supported without more resources. Current resources are far below what is needed. The cost for providing the needed housing is many times what is currently in the Housing Trust Fund, and this investment is critically needed. We need to be bold and fully fund the affordable housing needs. There needs to be funding for housing across the housing continuum. High property values in cities makes affordable housing challenging, and for some half of their income would have to go to rent payments. Housing supply is a top priority for the Legislature. The housing crisis is complex and needs to be addressed from several angles, and this is one of them. We have a responsibility to help those suffering in the crisis, including low wage workers, the homeless, those suffering from mental illness, and the developmentally disabled, and we should invest in them. Investments from the capital budget alone are not enough. This funding tool is needed to help address the housing and homelessness crisis. This bill provides additional progressive revenue at the state and local level to address the housing crisis. There needs to be dedicated revenue for affordable housing with flexibility for local use. This bill would offer critical support for cities to make real progress in addressing the affordable housing shortage and would require half of the revenue from the new local real estate excise tax to go toward affordable housing, with flexibility to support the housing with the remainder. This bill allows a local option for a revenue stream for those communities that want to do more in addressing affordable housing issues, and allows flexibility to tailor the solution to their community. The preservation and expansion of housing stock is a top priority for cities, and they need state partnership to accomplish this goal. This could double the ability of some jurisdictions to fund affordable housing. Current flexibility in local real estate excise tax use allows for substantial investment in local projects, but that flexibility is going away soon. There is a desperate shortage of housing for individuals with developmental disabilities, and there need to be tens of thousands of additional units built for these individuals. Many individuals still live at home with elderly parents, and almost all fall into the extremely low-income category with an income around $900. Many are at risk of losing their homes. Current funding only meets a small amount of the need. Options for housing have decreased because of shortages in work force and affordable housing, and this critical investment is needed. This bill will allow for housing for vulnerable people, instead of requiring them to stay in hospitals or state institutions, through much-needed grants and forgivable loans. The bill will create needed housing opportunities related to services for individuals with developmental disabilities, and will help to ensure that they have a better quality of life. The appreciation in home prices would outweigh the cost in additional local real estate excise tax in just a few days, so the new tax will not affect the market. Cities should be able to tier their real estate excise taxes like the state does.

(Opposed) Washington has among the highest real estate excise tax in the country, and this bill would give us the highest. The combination of past real estate excise tax increases and the current economy makes new taxes a major concern for investment. Demand is dropping, and this will depress sales. This will have unintended consequences on multi-family properties, as the taxes would be higher on those projects than on single-family homes. Even with the $5,000,000 floor, these costs would be passed along to renters. It would incentivize property owners to sell units as condos rather than to rent them. This would have a disproportionate and significant negative impact on large commercial and multi-family projects because the tax is imposed on the total sale rather than each unit. An increase in real estate excise taxes will increase housing costs across the state, and real estate excise tax is applied to every transaction. We can't keep adding to the costs of housing. The taxes don't just impact profit, but the feasibility of making investments in the first place. Increased taxes make it difficult to obtain financing, and this will act as a deterrent to new housing construction. This bill would make the housing crisis worse, not better. The bill absurdly proposes to increase the cost of housing to make housing more affordable. If you want to get less of something, tax it. The government created this problem, and the solution is not to raise taxes, as tax raises already cost taxpayers billions. Raising taxes is uncompassionate, mean, and vindictive, and citizens cannot afford it. The government likes to play at class warfare, including by raising the real estate excise tax. These taxes pull in more people who don't consider themselves rich and puts more hands in their pockets. There is a need for support for housing for individuals with developmental disabilities, but this should be funded without real estate excise taxes and the impacts on the real estate market. The private sector can produce affordable housing with the multi-family tax exemption. Current projects already have affordability components. With real estate excise tax increases, investors will hold on to properties, pulling them off the market, rather than selling them. The commercial real estate market has been hit hard with the pandemic and remote work, and there is already less than 50 percent occupancy and difficult financing projects at current rates. This bill will make the situation worse, and will lead to lower revenue than expected. We want density, but then tax the developers that provide it. We currently spend a lot of money on bureaucracy related to homelessness that does not actually address the issue.

Persons Testifying:

(In support) Representative Frank Chopp, prime sponsor; Amanda DeShazo, Tacoma-Pierce County Affordable Housing Consortium; Patience Malaba, Housing Development

Consortium; Diana Stadden and Stacy Dym, The Arc of Washington State; Clifford Cawthon, Habitat for Humanity Seattle-King and Kittitas County; John Hines, City of Tacoma; Marc Cote, Parkview Services; Michele Thomas, Washington Low Income Housing Alliance; Carl Schroeder, Association of Washington Cities; Nicholas Carr, Association of Washington Housing Authorities and Tacoma Housing Authority; Kelli Curtis, City of Kirkland; Janice Zahn, City of Bellevue; Mason Thompson; Melanie O'Cain, City of Kenmore; Brian Enslow, City of Vancouver; Mason Thompson, City of Bothell; Cathy Murahashi, Community Homes; Scott Livengood, Community Residential Services Association; Regan Bolli, City of Covington; Ginger Kwan, Open Doors for Multicultural Families; and Penny Lipsou, King County Department of Community and Human Services..

(Opposed) Greg Hanon and McKenzie Darr, NAIOP; Jeff Pack, Washington Citizens Against Unfair Taxes; Marty Goodman; Tim Eyman, Permanent Offense; William Shadbolt, Washington Business Properties Association; Carl Haglund, Columbia Modern Living; Gordon Haggerty; Mike Ennis, Association of Washington Business; Laurie Layne; Rod Kauffman, Building Owners and Managers Association; and John Worthington.

Persons Signed In To Testify But Not Testifying: None.