SENATE BILL REPORT
SB 6191

As of January 25, 2024

Title: An act relating to increasing the supply of affordable and workforce housing by reducing taxes on real property sales under $3,025,000, modifying the state and local real estate excise tax, and imposing a surcharge on the transfer of multimillion dollar properties.

Brief Description: Increasing the supply of affordable and workforce housing.

Sponsors: Senators Frame, Nguyen, Saldaña, Dhingra, Keiser, Wellman, Hunt, Hasegawa, Trudeau, Lovelett, Wilson, C., Stanford, Kuderer, Conway, Cleveland, Pedersen, Valdez and Nobles.

Brief History:
Committee Activity: Ways & Means: 1/25/24.

Brief Summary of Bill

- Increases the portion of the selling price subject to the state real estate excise tax (REET) rate of 1.1 percent from $525,000 to $750,000.
- Imposes a new real estate transfer tax (RETT) of 1 percent on the portion of the real estate selling price above $3.025 million.
- Requires all revenue from the REET and RETT to be divided among several accounts, including two newly created accounts, the Developmental Disabilities Housing and Services Account and the Housing Stability Account.
- Creates a REET and RETT exemption for certain sales or transfers of properties that will be used for a community purpose.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Real Estate Excise Taxes. Real estate excise tax (REET) is a tax on the sale of real property. All sales of real property in the state are subject to REET unless a specific exemption is claimed. REET also applies to certain transfers of controlling interest in entities that own real property in the state. The seller of the property typically pays the tax, although the buyer is liable for the tax if it is not paid. Unpaid tax can become a lien on the transferred property.

State Real Estate Excise Tax. The state imposes a graduated REET 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 million is taxed at 1.28 percent; the portion that is more than $1.525 million but less than $3.025 million is taxed at 2.75 percent; and any portion of the selling price over $3.025 million is taxed at 3 percent. Timberland and agricultural land is taxed at a flat rate of 1.28 percent.

The Department of Revenue (DOR) is required to adjust the first price threshold every four years by the lesser of the growth in the consumer price index (CPI) for shelter or 5 percent, rounded to the nearest $1,000. CPI 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 CPI 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.

All revenue from the REET is deposited as follows:
- 5.2 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
- 14 percent into the Education Legacy Trust Account, which is used to support education.

Real Estate Excise Tax Exemptions. Certain transfers of real estate are not subject to the REET. The 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 the REET. 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.

Local Real Estate Excise Tax. Local governments may impose a local REET that is in addition to the state REET. There are five different. The local REET is assessed at a fixed rate and, unlike the state REET, does not vary depending on the selling price of the real estate. Tax rates do vary by taxing district though, with most local jurisdictions imposing the REET at a rate of 0.25-0.50 percent of the selling price. Any exemption from the state REET also applies to the local REET.

Washington Housing Trust Fund, Apple Health and Homes Account, and Affordable Housing for All Account. 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 (Commerce).

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

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

Tax Preferences. All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference. In addition, an automatic ten-year expiration date is applied to new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Modifying the Real Estate Excise Tax. Beginning January 1, 2026, the portion of the selling price subject to the state REET rate of 1.1 percent is increased from $525,000 to $750,000.

Real Estate Transfer Tax. Beginning January 1, 2026, a real estate transfer tax (RETT) of 1 percent is imposed on the portion of the selling price of real estate over $3.025 million and is in addition to any REET paid on the sale. The RETT is imposed and collected in the same manner as REET. The selling price threshold of $3.025 million for RETT must be adjusted in the same manner and timing as the REET thresholds.

Revenue from the Taxes on Real Estate. All revenue from the REET and RETT must be distributed as follows:

- 93.2 percent must be deposited in the accounts currently receiving REET revenues and at the same percentage as currently provided in statute;
- the remaining 6.8 percent must be deposited as follows:
    1. 25 percent to the Washington State Housing Trust Fund, 5 percent of which must be solely for housing facilities in rural communities that prioritize serving low-income farmworker housing;
    2. 25 percent to the Apple Health and Homes Account;
    3. 25 percent to the Affordable Housing for All account for operations, maintenance, and service for permanent supportive housing;
    4. 15 percent to a new Developmental Disabilities Housing and Services Account; and
    5. 10 percent to the new Housing Stability Account.

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

Housing Stability Account. The Housing Stability Account is created. Expenditures from the account may only be used for grants to cover building operations, maintenance, and supportive service costs for low-income households or extremely low-income households where a supplement to rent income is required to cover ongoing operating expenses. Eligible housing projects must have received or will receive funding from the state housing trust fund, or other public capital funding programs. Grants provided must fund overall developments and may be used to fund new or existing housing projects.

Tax Exemption. Beginning January 1, 2026, 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 a community purpose is exempt from REET and RETT. 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.

Local Option Graduated Real Estate Excise Tax. The Department of Revenue (DOR) must study the requirements needed to implement and administer a local option graduated REET and submit a report to the Legislature by January 13, 2025. The study must include administrative recommendations and an estimate of expenditures required for DOR to successfully implement and administer a local option graduated REET.

Tax Preference Performance Requirements. The act is exempt from tax preference performance review and automatic expiration.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony On Proposed Substitute: PRO: This legislation seeks to address a gap in the state's approach to tackling the housing crisis. The state is simply not building enough affordable housing. Legislation last session did great work to address the market rate housing supply, including restrictive zoning and permitting, but more needs to be done to increase the supply of affordable housing. The state needs to build 1.1 million units over the next 20 years and about half of those need to be affordable for Washington families making less than area median income. The market alone will not solve the housing problem. A multiprong approach is necessary to solving the housing crisis, including a dedicated funding source for the Housing Trust Fund and for housing persons with intellectual and developmental disabilities. While capital investments are appreciated, the capital budget alone does not have the funds to solve the housing crisis. Most people in Washington are paying unsustainable amounts of their income toward housing, making them at high-risk for homelessness. This bill will bolster the availability of housing across every community in this state by creating a predictable and sustainable fund source for housing while also reducing the tax on most properties sold to lower and middle-income households. The bill supports rural communities, including farm worker housing. Many rural communities have affordable housing needs beyond farm worker housing. Household incomes are low and routinely below the statewide average. Communities lack adequate housing supply and historically have very limited local capital to invest. To build affordable housing, you need affordable sources of capital. Low-income people are overflowing onto the streets because they are house poor. This bill provides new revenue to house underserved populations, such as people with developmental disabilities and low-income residents in rural areas. Adding a transfer tax on high value property sales is a reasonable and effective way to provide revenue necessary to address the state's lack of affordable homes. The bill will not increase the list price of property sales because the tax is paid by the seller. Dedicated funding for housing persons with developmental disabilities will not only support organizations that build housing, but also those that provide the services necessary to keep people housed and out of crisis. Parents of adult children with an intellectual or developmental disability wonder how they are going to find them housing. The bill ensures that funds awarded to nonprofit developers are structured as recoverable grants, not interest-bearing loans, and allows funds to cover operating maintenance, preservation, and other housing services ensuring a sustainability of affordable housing. The limited availability of affordable housing in this state deepens racial disparities and disproportionately impacts low- and fixed-income households, including seniors, veterans, and people with disabilities. Permanent supportive housing works well. The dedicated funding in this bill will nonprofit housing organizations hire more frontline and safety staff, keep buildings safe and modernized, and help more people exit homelessness. The one percent transfer tax is less than the average commission on real estate, which is assessed on the full sales price, not just the marginal value. Many people are homeless, stuck in concrete settings, or are on long waiting lists for housing, and this is especially true for people with intellectual and developmental disabilities. Over 1000 people have signed in pro in support of this bill. The private real estate market on its own will not provide adequate affordable housing options. Government investments are paramount to providing a comprehensive array of affordable housing options, especially now as the affordable housing crises continues to worsen. The impact of increasing real estate taxes on housing development is limited and context dependent while the benefits are not.

CON: The commercial real estate market supports the economy while the residential market represents homes, families, community, and workforce, and when one is impacted, the other suffers. Tax increases on real estate, especially during a time of low housing supply and high interest rates, creates more market uncertainty. The tax increases in this bill would also apply to vacant land intended for development of affordable multifamily and single-family housing. Commercial real estate sales are down 82 percent over the last two years due to rising interest rates and impacts from the COVID-19 pandemic. Investors are reluctant to sell in the current market because of the high costs of real estate acquisition and disposition. Supporting the housing market creates jobs and raises revenue. Developments typically go through two sales before ground is broken on homes being built which means the transfer tax proposed in this bill will be doubled for new housing developments, as it was with the recent excise tax increase. The state's housing affordability crisis is a two-headed monster with supply on one side and costs on the other, and both elements need to be addressed in order to encourage private investment. The Legislature's work last session to address housing regulations, such as middle housing and permitting reform, is appreciated; however, this bill is a step backward as it increases the cost of real estate transactions and makes it harder to increase housing density and supply. Developers buy land or existing properties, and then develop them into more affordable options for consumers. Increasing taxes on housing projects will result in higher carrying costs as developers spend multiple years working on a project. It was just a few years ago that the Legislature passed a progressive real estate excise tax that increased the top marginal tax rate by over 134 percent. The tax increase in this bill is compounded for developers when you factor in inflation, rising labor and material costs, and higher interest rates. Increasing development costs are passed onto the consumer, which translate to more expensive rents and more expensive home prices. The state cannot make housing more affordable by making housing more expensive. Though real estate excise taxes fall on the seller, if the seller does not pay, then the buyer is responsible. Washington has the third highest real estate taxes in the country; this bill would move Washington to second. We need more housing in the state, not less. The kinds of extra costs proposed in this bill do not get magically absorbed but instead result in increased purchase prices, mortgages, property taxes, and insurance payments, which then impact the rental market. The bill will reduce multi-residential housing and sends a clear message that the state does not want small housing providers in this market. The pressures on the commercial real estate market means some owners are underwater and that will continue until interest rates drop and occupancy rises. Raises taxes on real estate will make a bad situation worse and further reduce sales activity. The majority of high-value transactions impacted by this bill are commercial and industrial properties that create jobs and provide affordable multi-family residential housing. The private market is not capable of delivering the necessary supply of housing when rents cannot recover construction costs. The best way to make housing more affordable is to balance supply and demand by making it easier to create more housing units. This is the worst possible time to impose the higher taxes on commercial real estate. Making the sale of apartment buildings more expensive does not solve the affordable housing crisis but instead reduces the supply of affordable housing by increasing rents.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; Cathy Murahashi, The Arc of Washington; Scott Livengood, Alpha Supported Living; Marc Cote, Parkview Services; Shawn Latham, Self Advocates In Leadership; Robert Wardell; Adrienne Stuart; Kari Cunningham-Rosvik; Michele Thomas, Washington Low Income Housing Alliance; Marty Miller, Office of Rural & Farmworker Housing; Pam Hurst, Realtor; Sarah Dickmeyer, Plymouth Housing; Carl Schroeder, Association of Washington Cities; Latrice Williams, Realtor; Patience Malaba, Housing Development Consortium of Seattle-King County; Ramona Hattendorf, The Arc of King County; Joeseph Wilson; Jesse Simpson, Housing Development Consortium; Preston Parish, Washington State Budget and Policy Center.

CON: Brent Ludeman, Building Industry Association of Washington; Debby Herbert; Emily Shay, Association of Washington Buisness; Patricia Hoendermis, Yakima Valley Landlords Assoc.; William Shadbolt, Washington Business Properties Association; Rod Kauffman, BOMA - Building Owners & Managers Assn; Mary Hull-Drury, Washington Realtors; Craig Soehren, WA State Commercial Association of Realtors & Commercial Brokers Association; Terry Wollam, Haven Development Corporation; Kim Faust, MainStreet Property Group, LLC.

Persons Signed In To Testify But Not Testifying: No one.