FINAL BILL REPORT
ESSB 5998

C 424 L 19
Synopsis as Enacted

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).

Senate Committee on Ways & Means
House Committee on Finance

Background: Real Estate Excise Tax. The sale of real estate is subject to the real estate excise tax (REET). The tax base is the selling price of the real estate, without any deduction for mortgages, liens, or other debts. The tax is typically paid by the seller. A transfer of controlling interests—50 percent or more over a 12-month period—in entities that own property in Washington is also subject to REET.

The state REET rate is a flat 1.28 percent. The revenue is distributed, through June 30, 2023, as follows:
- 2 percent to the Public Works Assistance Account;
- 4.1 percent to the Education Legacy Trust Account (ELTA);
- 1.6 percent to the City/County Assistance Fund, and
- the remainder to the state general fund.

After June 30, 2023, distributions to ELTA cease and distributions to the Public Works Assistance Account increase to 6.1 percent.

Any penalties assessed for delinquent tax payments are deposited into the Housing Trust Fund. In addition, counties retain 1.3 percent of the state tax collected to cover administrative costs.

Local governments may also impose a REET. Cities and counties are authorized to impose a 0.25 percent REET to finance capital improvements or capital projects specified in a comprehensive plan. A city and county may also impose a 0.5 percent REET for general purposes, so long as the city or county does not impose the optional 0.5 percent retail sales tax. In addition, a county may impose a 1 percent REET to finance the acquisition and maintenance of conservation areas, and 0.5 percent to finance the acquisition, construction, and operation of affordable housing for low to moderate income persons, or persons with special needs.

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

Education Legacy Trust Account. ELTA was created in 2005. Money in ELTA can only be used for K-12 and higher education. Revenues deposited into ELTA are not considered general state revenues for purposes of the Budget Stabilization Account.

Tax Preference Performance Statement. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Summary: Graduated REET. Beginning January 1, 2020, the real estate excise tax is imposed at the following rates:
- 1.1 percent if the selling price is equal to or less than $500,000;
- 1.28 percent on the portion of the selling price that is greater than $500,000, but equal to or less than $1,500,000;
- 2.75 percent on the portion of the selling price that is greater than $1,500,000, but equal to or less than $3,000,000; and
- 3 percent on the portion of the selling price that is greater than $3,000,000.

A rate of 1.28 percent is imposed on the sale of undeveloped land, timberland, agricultural land, and water or mineral rights, regardless of selling price.

Beginning on January 1, 2022, and every fourth year thereafter, the selling price thresholds are adjusted to reflect the lesser of the growth in the Consumer Price Index for Shelter over the past four years, or 5 percent. The Department of Revenue (DOR) must publish updated selling price thresholds by September 1, 2022, and September 1st of every fourth year thereafter. If the growth in Consumer Price Index for Shelter is less than 0 percent, the current selling price thresholds will continue to apply. DOR must report the updated selling price thresholds to the Legislature within six months of publication.

DOR must publish guidance to assist sellers in properly classifying real property on the REET affidavit for purposes of determining the proper amount of tax due under this section. Real property with multiple uses must be classified according to the property's predominant use and DOR's guidance must include factors for use in determining the predominant use of real property. DOR, rather than county treasurers, are responsible for verifying the seller has properly classified real property reported on a REET affidavit.

Revenue Distributions. Beginning January 1, 2020, and ending June 30, 2023, revenue distributions must be as follows:
- 1.7 percent must be deposited in the Public Works Assistance Account;
- 1.4 percent must be deposited in the City-County Assistance Account;
- 79.4 percent must be deposited in the general fund; and
- the remaining amount must be deposited in the Education Legacy Trust Account.

Beginning July 1, 2023, and thereafter, revenue distributions to the Public Works Assistance Account increases to 5.2 percent.

Controlling Interest Transfers. The term "sale," for the purpose of determining 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.

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.

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 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.

Tax Preference Performance Review. The act is exempt from tax preference performance requirements.

Votes on Final Passage:

Senate	26	22
House	56	42

Effective: January 1, 2020