Multiple Agency Fiscal Note Summary

Bill Number: 5096 E S SB	**Title:** Capital gains tax

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of State Treasurer	(9,000,000)	0	0	(19,000,000)	0	0	(21,000,000)	0	0
Office of Attorney General	0	0	122,000	0	0	84,000	0	0	46,000
Department of Revenue	16,000,000	357,000,000	483,000,000	19,000,000	719,000,000	1,066,000,000	13,000,000	741,000,000	1,155,000,000
Total $	**7,000,000**	**357,000,000**	**483,122,000**	**0**	**719,000,000**	**1,066,084,000**	**(8,000,000)**	**741,000,000**	**1,155,046,000**

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of State Treasurer	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	.4	0	0	122,000	.3	0	0	84,000	.2	0	0	46,000
Caseload Forecast Council	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Revenue	18.9	6,678,300	6,678,300	6,678,300	18.4	6,782,800	6,782,800	6,782,800	15.1	4,081,900	4,081,900	4,081,900
Department of Corrections	Fiscal note not available											
Total $	**19.3**	**6,678,300**	**6,678,300**	**6,800,300**	**18.7**	**6,782,800**	**6,782,800**	**6,866,800**	**15.3**	**4,081,900**	**4,081,900**	**4,127,900**

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

FNPID: 62834

FNS029 Multi Agency rollup

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of State Treasurer	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Caseload Forecast Council	.0	0	0	.0	0	0	.0	0	0
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	Fiscal note not available								
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Ramona Nabors, OFM	**Phone:** (360) 902-0547	**Date Published:** Preliminary 3/15/2021

FNPID: 62834

FNS029 Multi Agency rollup

Judicial Impact Fiscal Note

Bill Number: 5096 E S SB	Title: Capital gains tax	Agency: 055-Administrative Office of the Courts

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

☐ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

X If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

Legislative Contact	Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Preparation:	Sam Knutson	Phone: 360-704-5528	Date: 03/09/2021
Agency Approval:	Ramsey Radwan	Phone: 360-357-2406	Date: 03/09/2021
OFM Review:	Gaius Horton	Phone: (360) 819-3112	Date: 03/09/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Please see attached Judicial Impact Note (JIN).

II. B - Cash Receipts Impact

II. C - Expenditures

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditure By Object or Purpose (County)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Expenditure By Object or Purpose (City)

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

Part II: Narrative Explanation

This bill would impose a 7.0 percent capital gains tax, beginning January 1, 2022.

Part II.A – Brief Description of what the Measure does that has fiscal impact on the Courts

Section 112(1) – Would provide that any taxpayer who knowingly attempts to evade payment of the proposed capital gains tax would be guilty of a Class C felony.

Section 112(2) – Would provide that any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information regarding the proposed capital gains tax, would be guilty of a gross misdemeanor.

II.B - Cash Receipt Impact

None.

II.C – Expenditures

Indeterminate. There is no data available to estimate the number of Class C felonies or gross misdemeanors that would result from this bill.

Judicial education would be required. This would be managed within existing resources.

Individual State Agency Fiscal Note

Bill Number: 5096 E S SB	Title: Capital gains tax	Agency: 090-Office of State Treasurer

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

ACCOUNT	FY 2022	FY 2023	2021-23	2023-25	2025-27
General Fund-State 001-1		(9,000,000)	(9,000,000)	(19,000,000)	(21,000,000)
Workforce Education Investment Account-State 24J-1		9,000,000	9,000,000	19,000,000	21,000,000
Total $					

Estimated Operating Expenditures from:
NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Preparation:	Dan Mason	Phone: (360) 902-8990	Date: 03/10/2021
Agency Approval:	Dan Mason	Phone: (360) 902-8990	Date: 03/10/2021
OFM Review:	Ramona Nabors	Phone: (360) 902-0547	Date: 03/11/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

ESSB 5096 imposes a capital gains tax. Under section 113(4), the state treasurer is directed to transfer money from the general fund to the workforce education investment account. This fiscal note was coordinated with DOR.

In addition, the taxpayer fairness account is created, coupled with the general fund as the recipient of the earnings from investments under RCW 43.84.092(4).

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

DOR provided the transfer estimates.

Projected cash flows are currently unavailable; therefore, estimated earnings from investments are indeterminable.

There may be an impact on the debt service limitation calculation. Any change to the earnings credited to the general fund will change, by an equal amount, general state revenues.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5096 E S SB	Title: Capital gains tax	Agency: 100-Office of Attorney General

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

ACCOUNT	FY 2022	FY 2023	2021-23	2023-25	2025-27
Legal Services Revolving Account-State 405-1	61,000	61,000	122,000	84,000	46,000
Total $	61,000	61,000	122,000	84,000	46,000

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.4	0.4	0.4	0.3	0.2
Account					
Legal Services Revolving Account-State 405-1	61,000	61,000	122,000	84,000	46,000
Total $	61,000	61,000	122,000	84,000	46,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Preparation:	Cam Comfort	Phone: (360) 664-9429	Date: 03/10/2021
Agency Approval:	Edd Giger	Phone: 360-586-2104	Date: 03/10/2021
OFM Review:	Tyler Lentz	Phone: (360) 790-0055	Date: 03/11/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 103 is a new section imposing, beginning January 1, 2022, an excise tax on the sale or exchange of long-term capital assets by an individual, equal to seven percent multiplied by an individual's adjusted capital gain less $250,000 during a taxable year, as annually adjusted by the consumer price index beginning in December 2023.

Section 111 is a new section providing that RCW 82.32 applies to the administration of the capital gains tax.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These costs will be billed through the revolving account to the client agency.

The client agency is the Department of Revenue (DOR). The Attorney General's Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO's authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agency's fiscal note. Appropriation authority is necessary in the AGO budget.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Attorney General's Office (AGO) Agency Assumptions:

1. This bill has an emergency clause and is assumed to be effective immediately.

2. Total workload impact in this request includes standard assumption costs for good & services, travel, and capital outlays for all FTE identified.

3. Agency administration support FTE are included in the tables below, using a Management Analyst 5 as a representative classification.

Assumptions for the AGO Revenue & Finance Division's (REV) Legal Services for the Department of Revenue (DOR):

1. The AGO will bill DOR for legal services based on the enactment of this bill.

2. Legal services associated with the enactment of this bill are assumed to begin on July 1, 2021.

3. REV assumes the new capital gains tax will result in at least one lawsuit challenging its constitutionality filed in Superior Court.

4. REV assumes the Superior Court action or actions challenging the constitutionality of the capital gains tax will be filed after the effective date of this act, and assume legal services will be required starting in FY 2022.

5. DOR estimates this bill will result in up to 41 additional administrative appeals per FY before its Administrative Review and Hearings Division (ARHD) with the first such actions being filed beginning in April 2022.

6. DOR assumes approximately ten percent of the additional administrative appeals before ARHD will be appealed to the Board of Tax Appeals (BTA) and will require representation by the AGO. Up to six additional refund actions are assumed to be filed in Superior Court with respect to the capital gains tax. REV anticipates this new work will be required beginning in FY 2023. Consequently, up to ten BTA and Superior Court actions are assumed in FY 2023.

7. REV assumes that once the initial actions are heard by the BTA and Superior Court, the number of new actions filed in subsequent years will drop to three per year beginning in FY 2025.

8. REV assumes new legal services for 0.25 Assistant Attorney General (AAG) are necessary in FY 2022, FY 2023, and FY 2024, and 0.1 AAG in FY 2025 and in each FY thereafter.

9. REV will generate direct litigation costs for transcriptions fees, copying fees, clerk's papers, and other court related costs.
FY 2022: $1,000;
FY 2023 and FY 2024: $2,000;
FY 2025 and in each FY thereafter: $500

10. Total workload impact:
FY 2022: 0.25 AAG and 0.13 Legal Assistant (LA) at a cost of $61,000 (this includes direct litigation costs of $1,000).
FY 2023 & FY 2024: 0.25 AAG and 0.13 LA at a cost of $61,000 (this includes direct litigation costs of $2,000).
FY 2025 and in each FY thereafter: 0.1 AAG and 0.05 LA at a cost of $23,000 (this includes direct litigation costs of $500).

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
405-1	Legal Services Revolving Account	State	61,000	61,000	122,000	84,000	46,000
		Total $	61,000	61,000	122,000	84,000	46,000

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.4	0.4	0.4	0.3	0.2
A-Salaries and Wages	40,000	40,000	80,000	55,000	30,000
B-Employee Benefits	12,000	12,000	24,000	17,000	10,000
E-Goods and Other Services	8,000	9,000	17,000	12,000	6,000
J-Capital Outlays	1,000		1,000		
Total $	61,000	61,000	122,000	84,000	46,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Assistant Attorney General	108,600	0.3	0.3	0.3	0.2	0.1
Legal Assistant 3	54,108	0.1	0.1	0.1	0.1	0.1
Management Analyst 5	88,644	0.1	0.1	0.1	0.0	
Total FTEs		0.4	0.4	0.4	0.3	0.2

III. D - Expenditures By Program (optional)

Program	FY 2022	FY 2023	2021-23	2023-25	2025-27
Revenue & Finance Division (REV)	61,000	61,000	122,000	84,000	46,000
Total $	61,000	61,000	122,000	84,000	46,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 5096 E S SB	Title: Capital gains tax	Agency: 101-Caseload Forecast Council

Part I: Estimates

[X] **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:
NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

[ ] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

[ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

[ ] Capital budget impact, complete Part IV.

[ ] Requires new rule making, complete Part V.

Legislative Contact:	Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Preparation:	Clela Steelhammer	Phone: 360-664-9381	Date: 03/09/2021
Agency Approval:	Clela Steelhammer	Phone: 360-664-9381	Date: 03/09/2021
OFM Review:	Cynthia Hollimon	Phone: (360) 810-1979	Date: 03/09/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

ESSB 5096

CONCERNING AN EXCISE TAX ON GAINS FROM THE SALE OR EXCHANGE OF CERTAIN CAPITAL ASSETS

101 – Caseload Forecast Council

March 9, 2021

SUMMARY

A brief description of what the measure does that has fiscal impact.

Section 112 Establishes the unranked Class C felony offense concerning taxpayer evasion of any tax imposed in this chapter.

Section 112 Additionally establishes a new gross misdemeanor offense concerning taxpayer failing to pay tax, making returns, keeping records, or supplying information as required.

EXPENDITURES

Assumptions.

None.

Impact on the Caseload Forecast Council.

None.

Impacts on beds and supervision.

This bill:

- Establishes a Class C unranked felony offense and a gross misdemeanor offense.

The Caseload Forecast Council has no information concerning how many incidents of the newly established gross misdemeanor and unranked Class C felony offenses may occur. As such, the Caseload Forecast Council cannot reliably predict bed impacts resulting from the bill. However:

The newly established gross misdemeanor offense would be punishable by a term of confinement of 0-364 days in jail. Therefore, any impact would be on jail beds only.

The newly established unranked Class C felony offense would be punishable by a standard range term of confinement of 0-12 months in jail. Therefore, any impact would be on jail beds only, except in the case of an aggravated exceptional sentence.

Clela Steelhammer, Senior Criminal Justice Policy Analyst (360) 664-9381
Washington State Caseload Forecast Council Clela.Steelhammer@cfc.wa.gov

Department of Revenue Fiscal Note

Bill Number: 5096 E S SB	Title: Capital gains tax	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 00 - 00 -		100,000,000	100,000,000	206,000,000	214,000,000
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax		(84,000,000)	(84,000,000)	(187,000,000)	(201,000,000)
Education Legacy Trust Account-State 00 - 00 -		350,000,000	350,000,000	719,000,000	749,000,000
Workforce Educationa Investment Account-State 01 - Taxes 05 - Bus and Occup Tax		(9,000,000)	(9,000,000)	(19,000,000)	(21,000,000)
NEW-State 00 - 00 -		126,000,000	126,000,000	347,000,000	414,000,000
Total $		483,000,000	483,000,000	1,066,000,000	1,155,000,000

Estimated Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	14.8	23.0	18.9	18.4	15.1
Account					
GF-STATE-State 001-1	2,489,600	4,188,700	6,678,300	6,782,800	4,081,900
Total $	2,489,600	4,188,700	6,678,300	6,782,800	4,081,900

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

[X] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

[ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

[X] Capital budget impact, complete Part IV.

[X] Requires new rule making, complete Part V.

Legislative Contact:	Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Preparation:	Sara del Moral	Phone: 360-534-1525	Date: 03/10/2021
Agency Approval:	Don Gutmann	Phone: 360-534-1510	Date: 03/10/2021
OFM Review:	Ramona Nabors	Phone: (360) 902-0547	Date: 03/10/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in ESSB 5096, 2021 Legislative Session.

CURRENT LAW:
There is no capital gains tax in Washington State.

COMPARISON BETWEEN ENGROSSED SUBSTITUTE SENATE BILL (ESSB) 5096 AND SUBSTITUTE SENATE BILL (SSB) 5096:
ESSB 5096 makes the following changes as compared with SSB 5096 that affect the estimates contained in this fiscal note:
- Clarifies that the sale or exchange of an individual's interest in an entity that owns an interest in real property does not qualify for the real estate exemption in Section 104(1) of the engrossed bill.
- Exempts the sale of a controlling interest in an entity from capital gains tax for the portion of the gains or losses from the sale or exchange directly attributable to real estate if the controlling interest transfer is also subject to real estate excise tax.
- Eliminates the exemption for the sale or exchange of agricultural land, presumably because it is duplicative of the real estate exemption.
- Eliminates the requirement that cattle, horses or breeding livestock be held for more than 12 months to qualify for exemption.
- Eliminates the maximum number of employees a qualifying business may have for its sale to qualify for the qualified family-owned small business deduction.
- Increases the limit on worldwide gross revenue that a qualifying business may have for its sale to qualify for the qualified family-owned small business deduction.
- Deposits the first $350 million in revenues collected during calendar year 2023 into the Education Legacy Trust Account, the next $100 million to the State General Fund, and the remainder into a new Taxpayer Fairness Account.
- Adds annual inflationary adjustments for:
--- The amount of the standard deduction,
--- Amounts deposited annually to the Education Legacy Trust Account and the State General Fund, and
--- For a taxpayer using the qualified family-owned small business deduction, the limit on annual worldwide gross revenue.
- Removes the provision expressing the legislative intent that any provision found ambiguous by a court or administrative agency should be construed in favor of application of the tax.
- Removes the provision permitting the Department of Revenue to enter into reciprocal tax collection agreements with the tax officials of another state.
- Removes the emergency clause and immediate effective date.
- Adds a provision which provides that incomplete gift non-grantor trusts are deemed to be grantor trusts for the purposes of the tax. Any gain or loss from sales of exchanges of capital assets by such a trust must be included in the calculation of the adjusted capital gain of a grantor of the trust.
- Makes other technical clarifications and corrections.

PROPOSAL:
Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals 7 percent multiplied by an individual's Washington capital gains.

After exempting certain capital gains based on the type of asset sold or exchanged, a standard deduction of $250,000 is available for all filers, whether filing as an individual or jointly. The standard deduction is adjusted annually for inflation.

WASHINGTON CAPITAL GAINS
The amount of Washington capital gains is computed by making certain adjustments to an individual's federal long-term net capital gains. Only adjusted capital gains from the sale or exchange of capital assets sourced in Washington are subject to the

tax. Losses resulting from the sale or exchange of assets sourced elsewhere may not reduce the taxable amount.

EXEMPTIONS BASED ON TYPE OF ASSET SOLD OR EXCHANGED
The capital gains tax does not apply to the following:
- The sale or exchange of real estate. However, the sale or exchange of an interest in an entity that owns an interest in real property does not qualify for this exemption.
- The sale or exchange of a controlling interest in an entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the entity's interest in real property and the sale or exchange was subject to tax under chapter 82.45 RCW. A controlling interest is generally defined as an ownership interest of at least 50 percent in an entity.
- The sale or exchange of assets under certain retirement savings vehicles.
- Capital gains from the sale or exchange of assets sold or exchanged under condemnation proceedings or imminent threat of condemnation.
- The sale or exchange of cattle, horses, or breeding livestock by farmers if more than 50 percent of the taxpayer's gross income is from farming or ranching.
- The sale or exchange of property depreciable under Internal Revenue Code section 167(a)(1) or that qualifies for expensing under Internal Revenue Code section 179.
- The sale or exchange of timber or timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber or timberland.
- The sale or exchange of goodwill from the sale of an auto dealership licensed under chapter 46.70 RCW.

DEDUCTIONS
Qualified Family-Owned Small Business Deduction: A deduction is provided for capital gains derived from the sale of substantially all of the assets of, or the transfer of substantially all of a person's interest in, a qualified family-owned small business. To qualify, a taxpayer or a family member must have materially participated in the operation of the business for at least five of the eight years preceding the sale or transfer. Sales or transfers to qualified heirs are exempt from the material participation requirement.

To qualify for the deduction, a taxpayer must meet several requirements.
- "Substantially all" means 90 percent.
- Sale of assets: The sale is of at least 90 percent of the fair market value of the assets of the business. Assets include real property, tangible personal property, and intangible property.
- Transfer of interest: The transfer must be of at least 90 percent of a person's interest in a business. E.g., a person owning 50 percent of the business must transfer at least 45 percent of the business ownership (i.e., 90 percent of their share).

Qualified interest in a family-owned small business:
- Can be a sole proprietorship, or
- An interest in an entity carrying on a trade or business if at least:
  - 50 percent of the entity is owned by the taxpayer and/or members of the taxpayer's family,
  - 70 percent of the entity is owned by two families and at least 30 percent is owned by the taxpayer and/or their family, or
  - 90 percent of the entity is owned by three families and at least 30 percent is owned by the taxpayer and/or their family.

Small business: A small business must have worldwide gross revenue of $10 million or less for the 12 months immediately preceding the sale or transfer. This gross revenue limit is adjusted annually for inflation.

Material participation:
- The taxpayer, or their family, owned or had a qualifying interest in the business for at least eight years immediately prior to the sale of assets or transfer of interest.
- During at least five of the eight-year period immediately preceding the sale, the taxpayer or a member of their family materially participated in the operation of the trade or business.
- Exception: The material participation requirement does not apply to sales of assets or transfers of interests to qualified heirs (certain family members of the taxpayer).

Legally prohibited amounts: A deduction is allowed for amounts the state is prohibited from taxing under federal law or the constitutions of the United States or the state of Washington.

CREDITS
B&O tax credit: A credit against the business and occupation (B&O) tax is allowed, to avoid taxing the same sale or exchange under both the B&O and capital gains taxes.

Out-of-state credit: A credit against the capital gains tax is allowed for the amount of capital gains taxes paid to another taxing jurisdiction on capital gains derived from sources within the other taxing jurisdiction to the extent the capital gains are included in the measure of the Washington capital gains tax.

FILING DEADLINES
Washington capital gains tax returns, any required information returns, and payments are due at the same time that the taxpayer's federal income tax return for the taxable year is due. Individuals receiving a federal tax filing extension also qualify for a state capital gains tax filing extension, but the tax is still due on the original filing date.

REVENUES
Annual revenues collected during calendar year 2023 will be deposited as follows:
- The first $350 million to the Education Legacy Trust Account,
- The next $100 million to the State General Fund, and
- The remainder to the new Taxpayer Fairness Account.

Beginning with revenues collected during Calendar Year 2024, the amounts deposited to the Education Legacy Trust Account and the State General Fund will be adjusted annually for inflation.

EFFECTIVE DATE:
The bill takes effect 90 days after final adjournment of the session in which it is enacted.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:
- Approximately 8,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The NEW fund in the table above corresponds to the Taxpayer Fairness Account, created under this proposal.
- The tax takes effect on January 1, 2022, and the first payments are due on or about April 17, 2023.
- Because we do not have federal tax return data on nonresident individuals, this fiscal estimate assumes that the long-term net capital gains reported on Washington residents' federal tax returns are equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under Section 108 when calculating their adjusted capital gains and Washington capital gains. Losses not allocated to the state under Section 108 cannot be used to reduce a taxpayer's adjusted capital gains and Washington capital gains. Limiting available losses to losses allocated to the state has a minimal but positive impact on revenues. However, for the purpose of this estimate, we assume the impact is zero due to a lack of

information about how gains and losses are allocated to the state in the data available.
- Decoupling the Federal Opportunity Zone program from the Washington capital gains tax will have a minimal but positive impact on revenues.
- No estimated payments or withholdings are made during the year.
- For all asset types excluded from the tax, the percentage of a Washington taxpayer's gains resulting from sales or exchanges of these assets aligns with percentages reported in IRS / SOI statistical tables for all taxpayers nationwide.
- Future amounts of capital gains for Washington taxpayers equal the amounts reported in 2018 tax returns, adjusted by using forecasted rates of growth and decay.
- The ratio of the out-of-state credit to gross tax is the same for Tax Years 2017 and 2018.
- Compliance is 85 percent in the first year, 90 percent in the second year, and 95 percent thereafter.

For the purpose of estimating the amount of the qualified family-owned small business deduction, we assume:
- All Washington firms with $10 million or less in annual gross revenue will qualify as a qualified family-owned small business.
- To the extent that capital gains are derived from either (1) the sale of substantially all of the fair market value of the assets of a qualified family-owned small business, or (2) the sale of substantially all of a taxpayer's qualifying interest in a qualified family-owned small business, the capital gains from such a sale will qualify for a deduction.
- The percentage of all capital gains qualifying for the qualified family-owned small business deduction remains constant year-to-year. This assumption has the same revenue impact as annually inflating the gross revenue limitation would have.

For the purpose of estimating the amount of pass-through capital gains exempted, we assume:
- The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. S-corporations and partnerships for Tax Year 2014.
- Sales or exchanges from 89 percent of depreciable business assets are exempt.
- Sales or exchanges from all real estate held by these entities are exempt.
- Sales or exchanges from 15 percent of partnership, S corporation, and estate or trust interests are exempt as the sale or exchange of a controlling interest in an entity that owns real property in this state.

Due to a lack of available information about the amount of goodwill associated with sales of franchised auto dealerships, we assume the amount of goodwill associated with the sale of a franchised auto dealership is:
- For pass-through capital gains, the amount of amortizable intangible assets held by businesses in the "Motor vehicle dealers and parts dealers" sector, and
- For "Other Assets" sold or exchanged for capital gains, we assume that 51 percent of sales or exchanges of such assets are exempt, rather than 50 percent. The Other Assets category is in IRS table 2A, listed in the Data Sources section.

B&O tax credit:
- Each taxpayer maximizes the amount of the credit by applying the standard deduction first to gains realized from personal sources, then applying any remainder to gains from business sources.
- 10 percent of taxable capital gains resulting from business activity in the finance sector is not subject to the B&O tax, because it comes from private equity firms and hedge funds, which qualify for the investment income deduction against the B&O tax.
- The Financial Institutions Surtax for the B&O tax remains in effect.

DATA SOURCES:
- Internal Revenue Service (IRS) - Individual income tax returns data, Tax Years 2017 and 2018.
- IRS: SOI Tax Stats - Sales of Capital Assets Report on Individual Tax Returns, Tables 2A and 1C, Tax Years 2008 to

2012.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120S - Table 6.1. Balance Sheet and Income Statement Items, by Major Industry, Tax Year 2014.
- IRS Statistics of Income: Table 3. All Partnerships: Balance Sheets by Industrial Group, Tax Year 2016.
- IRS Statistics of Income: Table 5. Partnerships with Income (or Loss) Allocated to Partners, by Selected Industrial Group, Tax Year 2014.
- Department of Revenue: Excise tax data, Calendar Year 2020, Q2, used to estimate effective B&O tax rates for finance sector firms.
- Department of Revenue: Excise tax data, Fiscal Year 2018, used to estimate percentage of gross revenues that come from small businesses.
- Personal Income Forecast (November 2020). This includes:
  --- The U.S. Congressional Budget Office: Capital gains realizations forecast (all states), August 2020, used to grow capital gains amounts.
  --- Economic and Revenue Forecast Council, November 2020, Seattle CPI-Urban (U.S. BLS) forecast, used to adjust amounts for inflation.

REVENUE IMPACT:

State Government (cash basis, $000):

FY 2022 -	$ 0
FY 2023 -	$ 483,000
FY 2024 -	$ 514,000
FY 2025 -	$ 552,000
FY 2026 -	$ 569,000
FY 2027 -	$ 586,000

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:
- This estimate affects 8,000 taxpayers.
- Taxpayers will not be required to make estimated payments.

FIRST YEAR COSTS:
The Department will incur total costs of $2,489,600 in Fiscal Year 2022. These costs include:

Labor Costs - Time and effort equates to 14.84 FTEs.
- Provide technical advice, interpretation and analysis for internal use during the implementation process.
- Program, setup, test and verify computer systems to accept taxpayer returns and other required information and process reporting information for collection, audit, and refund purposes.
- Develop training for processing and working with capital gains tax returns.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Create a special notice and update website and published information.
- Respond to tax ruling requests and email inquiries.
- Adopt two new administrative rules.

Object Costs - $607,100.
- Contract computer system programming.

- Purchase additional server equipment.
- Print and mail a special notice to affected taxpayers.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Legal assistance from the Office of the Attorney General.

SECOND YEAR COSTS:
The Department will incur total costs of $4,188,700 in Fiscal Year 2023. These costs include:

Labor Costs - Time and effort equates to 23.0 FTEs.
- Provide technical advice and interpretation services for internal use.
- Ongoing programming and testing of computer systems.
- Ongoing training development and training for the new tax.
- Create returns and design and develop new templates and forms.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from individuals and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.
- Establish new reporting accounts for capital gains taxpayers.
- Process paper returns and associated work items.
- Resolve error and out of balance returns, conduct desk audits, prepare refunds and assessments.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews that provide taxpayers with an informal, non-adversarial dispute resolution process for the review of a disputed action by the Department, such as an assessment of taxes, notice of taxes due, denial of a refund request, or tax ruling.

Object Costs - $1,739,300.
- Contract computer system programming.
- Purchase additional server equipment.
- Purchase additional scanning equipment.
- Acquire additional seat licenses for the Telephone Information Center.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Background checks for employees working with Internal Revenue Service data.
- Legal assistance from the Office of the Attorney General.

THIRD YEAR COSTS:
The Department will incur total costs of $3,991,600 in Fiscal Year 2024. These costs include:

Labor Costs - Time and effort equates to 19.2 FTEs.
- Provide technical advice and interpretation services for internal use.
- Ongoing programming and testing of computer systems including receiving and processing Internal Revenue Service information for verification of reporting and tax discovery.
- Ongoing training for the new tax.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.

- Establish new reporting accounts for capital gains taxpayers.
- Process returns, payments and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews.

Object Costs - $2,069,700.
- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Background checks for employees working with Internal Revenue Service data.
- Legal assistance from the Office of the Attorney General.

FOURTH YEAR COSTS:
The Department will incur total costs of $2,791,200 in Fiscal Year 2025. These costs include:

Labor Costs - Time and effort equates to 17.6 FTEs.
- Provide technical advice and interpretation services for internal use.
- Ongoing programming and testing of computer systems.
- Ongoing training for the new tax.
- Answer phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants.
- Update and maintain hard copy and online educational and informational materials.
- Respond to tax ruling requests and email inquiries.
- Establish new reporting accounts for capital gains taxpayers.
- Process returns, payments and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Create a tax discovery process and use desk audits to assess discovered liabilities.
- Collect delinquent assessments as a result of return errors.
- Hear additional administrative reviews.

Object Costs - $1,032,100.
- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence, notices and returns to paper filers.
- Acquire informational brochures.
- Warrant filing fees and postage for collection of additional delinquent accounts.
- Background checks for employees working with Internal Revenue Service data.
- Utilize locate and research services to verify reporting and tax discovery.
- Legal assistance from the Office of the Attorney General.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	14.8	23.0	18.9	18.4	15.1
A-Salaries and Wages	1,168,700	1,534,300	2,703,000	2,374,300	1,946,700
B-Employee Benefits	420,600	552,400	973,000	854,800	700,800
C-Professional Service Contracts	500,000	1,500,000	2,000,000	3,000,000	1,000,000
E-Goods and Other Services	256,200	355,700	611,900	496,900	385,100
G-Travel	300	600	900	600	600
J-Capital Outlays	143,800	245,700	389,500	56,200	48,700
Total $	$2,489,600	$4,188,700	$6,678,300	$6,782,800	$4,081,900

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
COMMUNICATIONS CNSLT 4	64,332	0.5	0.5	0.5		
CUSTOMER SERV SP2	39,528		0.3	0.2	0.1	0.1
EMS BAND 4	119,061	0.0		0.0		
EMS BAND 5	139,090	0.0		0.0		
EXCISE TAX EX 1	43,392		1.0	0.5	1.0	1.0
EXCISE TAX EX 2	54,108		5.0	2.5	5.0	5.0
EXCISE TAX EX 3	59,688	1.0	1.0	1.0	1.0	1.0
FISCAL ANALYST 3	55,524		0.1	0.1	0.1	0.1
IT APP DEV-JOURNEY	85,644	1.0	1.0	1.0	0.5	0.5
IT B A-JOURNEY	85,644	0.5	0.5	0.5	0.3	0.3
IT PROJ MGT-JOURNEY	89,916	1.0	1.0	1.0	0.5	0.5
IT QA-JOURNEY	85,644	1.5	1.5	1.5	0.8	0.8
MGMT ANALYST4	70,956	3.3	3.5	3.4	2.5	1.8
MGMT ANALYST5	78,408	1.1	0.8	1.0	0.2	0.1
RECORDS MGMT SUPV	67,560		0.2	0.1		
REVENUE AGENT 4	64,332		0.3	0.2	0.3	0.3
TAX INFO SPEC 1	43,392		2.3	1.2	2.2	1.0
TAX INFO SPEC 4	64,332	0.5	1.0	0.8	1.0	0.5
TAX POLICY SP 2	72,756	0.0		0.0		
TAX POLICY SP 3	82,344	2.6	1.6	2.1	1.6	0.8
TAX POLICY SP 4	88,644	0.6	0.4	0.5	0.4	0.3
WMS BAND 2	89,018	1.1	1.0	1.1	1.0	1.0
WMS BAND 3	101,257	0.0		0.0		
Total FTEs		14.8	23.0	18.9	18.4	15.1

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will adopt two new rules under 458-20 WAC, one using the complex process and one using the standard process.

Persons affected by this rule making would include individuals meeting the threshold for reporting and/or paying the new capital gains tax.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5096 E S SB	**Title:** Capital gains tax

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- [ ] Cities:
- [x] Counties: Indeterminate costs incurred due to increased jail bed demands created by the new Class C felony and gross misdemeanor offenses created by this legislation
- [ ] Special Districts:
- [ ] Specific jurisdictions only:
- [ ] Variance occurs due to:

Part II: Estimates

- [ ] No fiscal impacts.
- [ ] Expenditures represent one-time costs:
- [ ] Legislation provides local option:
- [x] Key variables cannot be estimated with certainty at this time: Number of occurrences of offenses created by this legislation that will occur

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: David Rosen	Phone: 360-790-3274	Date: 03/09/2021
Leg. Committee Contact: Tracey OBrien	Phone: 360-786-7152	Date: 03/08/2021
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 03/09/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 03/10/2021

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

Section 112 (1) dictates that any taxpayer who knowingly attempts to evade payment of the tax imposed under the chapter created by this legislation is guilty of a Class C felony.

Per RCW 9A.20.021 (Maximum sentences for crimes committed July 1, 1984, and after), a Class C felony is punishable by confinement in a state prison for up to 5 years, a fine up to $10,000, or by both such confinement and fine.

Section 112 (2) dictates that any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor.

Per RCW 9A.20.021, a gross misdemeanor is punishable by confinement in a county jail for up to 364 days, a fine up to $5,000, or by both such confinement and fine.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This legislation would have an indeterminate impact on local government expenditures. Please note, court impacts, including judicial costs, clerk costs, and court fees are described in fiscal notes prepared by the Administrative Office of the Courts (AOC). Local government fiscal notes include city and county expenditures for law enforcement investigations and arrests, indigent defenders, prosecutors, and jail costs.

This legislation creates new unranked class C felony and gross misdemeanor offenses.

ENFORCEMENT AND PROSECUTION COSTS:
Per the Department of Revenue (DOR), this legislation creates a new tax under RCW Title 82 (Excise Taxes). DOR will be responsible for the enforcement of this tax. Furthermore, any prosecutions that take place due to violations of Section 112 of this legislation would be the responsibility of the Attorney General's Office in consultation with the DOR.

JAIL BED IMPACTS:
At this time the exact bed impacts of this legislation cannot be reliably estimated as the number of occurrences of the newly established Class C felony and gross misdemeanor that may occur per year are unknown.

The newly established gross misdemeanor offense would be punishable by a term of confinement of 0 - 364 days in jail. Therefore, any impact would be on jail beds only.

The newly established unranked Class C felony offense would be punishable by a standard range term of confinement of 0 - 12 months in jail. Therefore, any impact would be on jail beds only, except in the case of an aggravated exceptional sentence.

Per, the 2021 Local Government Fiscal Note Program's Criminal Justice Cost Matrix, the cost of an occupied county jail bed is $114 per day.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This legislation would have no impact on local government revenues.

SOURCES:
2021 Local Government Fiscal Note Program Criminal Justice Cost Matrix
Fiscal Note - SB 5096 (2021)
Washington Caseload Forecast Council
Washington Department of Revenue

Multiple Agency Ten-Year Analysis Summary

Bill Number	Title
5096 E S SB	Capital gains tax

This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

Estimated Cash Receipts

	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	2022-31 TOTAL
Administrative Office of the Courts	0	0	0	0	0	0	0	0	0	0	0
Office of State Treasurer	0	0	0	0	0	0	0	0	0	0	0
Office of Attorney General	0	0	0	0	0	0	0	0	0	0	0
Caseload Forecast Council	0	0	0	0	0	0	0	0	0	0	0
Department of Revenue	0	576,000,000	613,000,000	659,000,000	678,000,000	699,000,000	723,000,000	749,000,000	776,000,000	804,000,000	6,277,000,000
Total	**0**	**576,000,000**	**613,000,000**	**659,000,000**	**678,000,000**	**699,000,000**	**723,000,000**	**749,000,000**	**776,000,000**	**804,000,000**	**6,277,000,000**

Ten-Year Analysis

Bill Number	Title	Agency
5096 E S SB	Capital gains tax	055 Administrative Office of the Courts

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts** [ ] **Partially Indeterminate Cash Receipts** [ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 3/9/2021 11:22:30 am
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 3/9/2021 11:22:30 am
OFM Review:	Phone:	Date:

Ten-Year Analysis

Bill Number	Title	Agency
5096 E S SB	Capital gains tax	090 Office of State Treasurer

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts** [ ] **Partially Indeterminate Cash Receipts** [ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Agency Preparation: Dan Mason	Phone: (360) 902-8990	Date: 3/10/2021 11:17:21 pm
Agency Approval: Dan Mason	Phone: (360) 902-8990	Date: 3/10/2021 11:17:21 pm
OFM Review:	Phone:	Date:

Ten-Year Analysis

Bill Number	Title	Agency
5096 E S SB	Capital gains tax	100 Office of Attorney General

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts** [ ] **Partially Indeterminate Cash Receipts** [ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 3/10/2021 1:04:25 pm
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 3/10/2021 1:04:25 pm
OFM Review:	Phone:	Date:

Ten-Year Analysis

Bill Number	Title	Agency
5096 E S SB	Capital gains tax	101 Caseload Forecast Council

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts** [ ] **Partially Indeterminate Cash Receipts** [ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 3/9/2021 8:16:31 am
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 3/9/2021 8:16:31 am
OFM Review:	Phone:	Date:

Ten-Year Analysis

Bill Number	Title	Agency
5096 E S SB	Capital gains tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

☐ **No Cash Receipts** ☐ **Partially Indeterminate Cash Receipts** ☐ **Indeterminate Cash Receipts**

Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	2022-31 TOTAL
Capital Gains Tax	001		100,000,000	102,000,000	104,000,000	106,000,000	108,000,000	110,000,000	112,000,000	115,000,000	117,000,000	974,000,000
Capital Gains Tax	08A		350,000,000	356,000,000	363,000,000	371,000,000	378,000,000	386,000,000	393,000,000	401,000,000	409,000,000	3,407,000,000
Capital Gains Tax	new		126,000,000	155,000,000	192,000,000	201,000,000	213,000,000	227,000,000	244,000,000	260,000,000	278,000,000	1,896,000,000
Total			**576,000,000**	**613,000,000**	**659,000,000**	**678,000,000**	**699,000,000**	**723,000,000**	**749,000,000**	**776,000,000**	**804,000,000**	**6,277,000,000**

Biennial Totals	576,000,000	1,272,000,000	1,377,000,000	1,472,000,000	1,580,000,000	6,277,000,000

Narrative Explanation (Required for Indeterminate Cash Receipts)

Note: This fiscal note reflects language in ESSB 5096, 2021 Legislative Session.

CURRENT LAW:
There is no capital gains tax in Washington State.

COMPARISON BETWEEN ENGROSSED SUBSTITUTE SENATE BILL (ESSB) 5096 AND SUBSTITUTE SENATE BILL (SSB) 5096:
ESSB 5096 makes the following changes as compared with SSB 5096 that affect the estimates contained in this fiscal note:
- Clarifies that the sale or exchange of an individual's interest in an entity that owns an interest in real property does not qualify for the real estate exemption in Section 104(1) of the engrossed bill.
- Exempts the sale of a controlling interest in an entity from capital gains tax for the portion of the gains or losses from the sale or exchange directly attributable to real estate if the controlling interest transfer is also subject to real estate excise tax.
- Eliminates the exemption for the sale or exchange of agricultural land, presumably because it is duplicative of the real estate exemption.
- Eliminates the requirement that cattle, horses or breeding livestock be held for more than 12 months to qualify for exemption.

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- Eliminates the maximum number of employees a qualifying business may have for its sale to qualify for the qualified family-owned small business deduction.
- Increases the limit on worldwide gross revenue that a qualifying business may have for its sale to qualify for the qualified family-owned small business deduction.
- Deposits the first $350 million in revenues collected during calendar year 2023 into the Education Legacy Trust Account, the next $100 million to the State General Fund, and the remainder into a new Taxpayer Fairness Account.
- Adds annual inflationary adjustments for:
--- The amount of the standard deduction,
--- Amounts deposited annually to the Education Legacy Trust Account and the State General Fund, and
--- For a taxpayer using the qualified family-owned small business deduction, the limit on annual worldwide gross revenue.
- Removes the provision expressing the legislative intent that any provision found ambiguous by a court or administrative agency should be construed in favor of application of the tax.
- Removes the provision permitting the Department of Revenue to enter into reciprocal tax collection agreements with the tax officials of another state.
- Removes the emergency clause and immediate effective date.
- Adds a provision which provides that incomplete gift non-grantor trusts are deemed to be grantor trusts for the purposes of the tax. Any gain or loss from sales of exchanges of capital assets by such a trust must be included in the calculation of the adjusted capital gain of a grantor of the trust.
- Makes other technical clarifications and corrections.

PROPOSAL:
Beginning January 1, 2022, an excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax, which equals 7 percent multiplied by an individual's Washington capital gains.

After exempting certain capital gains based on the type of asset sold or exchanged, a standard deduction of $250,000 is available for all filers, whether filing as an individual or jointly. The standard deduction is adjusted annually for inflation.

WASHINGTON CAPITAL GAINS
The amount of Washington capital gains is computed by making certain adjustments to an individual’s federal long-term net capital gains. Only adjusted capital gains from the sale or exchange of capital assets sourced in Washington are subject to the tax. Losses resulting from the sale or exchange of assets sourced elsewhere may not reduce the taxable amount.

EXEMPTIONS BASED ON TYPE OF ASSET SOLD OR EXCHANGED
The capital gains tax does not apply to the following:
- The sale or exchange of real estate. However, the sale or exchange of an interest in an entity that owns an interest in real property does not qualify for this exemption.
- The sale or exchange of a controlling interest in an entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to

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the entity's interest in real property and the sale or exchange was subject to tax under chapter 82.45 RCW. A controlling interest is generally defined as an ownership interest of at least 50 percent in an entity.
- The sale or exchange of assets under certain retirement savings vehicles.
- Capital gains from the sale or exchange of assets sold or exchanged under condemnation proceedings or imminent threat of condemnation.
- The sale or exchange of cattle, horses, or breeding livestock by farmers if more than 50 percent of the taxpayer's gross income is from farming or ranching.
- The sale or exchange of property depreciable under Internal Revenue Code section 167(a)(1) or that qualifies for expensing under Internal Revenue Code section 179.
- The sale or exchange of timber or timberland, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber or timberland.
- The sale or exchange of goodwill from the sale of an auto dealership licensed under chapter 46.70 RCW.

DEDUCTIONS
Qualified Family-Owned Small Business Deduction: A deduction is provided for capital gains derived from the sale of substantially all of the assets of, or the transfer of substantially all of a person's interest in, a qualified family-owned small business. To qualify, a taxpayer or a family member must have materially participated in the operation of the business for at least five of the eight years preceding the sale or transfer. Sales or transfers to qualified heirs are exempt from the material participation requirement.

To qualify for the deduction, a taxpayer must meet several requirements.
- "Substantially all" means 90 percent.
- Sale of assets: The sale is of at least 90 percent of the fair market value of the assets of the business. Assets include real property, tangible personal property, and intangible property.
- Transfer of interest: The transfer must be of at least 90 percent of a person's interest in a business. E.g., a person owning 50 percent of the business must transfer at least 45 percent of the business ownership (i.e., 90 percent of their share).

Qualified interest in a family-owned small business:
- Can be a sole proprietorship, or
- An interest in an entity carrying on a trade or business if at least:
  - 50 percent of the entity is owned by the taxpayer and/or members of the taxpayer's family,
  - 70 percent of the entity is owned by two families and at least 30 percent is owned by the taxpayer and/or their family, or
  - 90 percent of the entity is owned by three families and at least 30 percent is owned by the taxpayer and/or their family.

Small business: A small business must have worldwide gross revenue of $10 million or less for the 12 months immediately preceding the sale or transfer. This gross revenue limit is adjusted annually for inflation.

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Material participation:
- The taxpayer, or their family, owned or had a qualifying interest in the business for at least eight years immediately prior to the sale of assets or transfer of interest.
- During at least five of the eight-year period immediately preceding the sale, the taxpayer or a member of their family materially participated in the operation of the trade or business.
- Exception: The material participation requirement does not apply to sales of assets or transfers of interests to qualified heirs (certain family members of the taxpayer).

Legally prohibited amounts: A deduction is allowed for amounts the state is prohibited from taxing under federal law or the constitutions of the United States or the state of Washington.

CREDITS
B&O tax credit: A credit against the business and occupation (B&O) tax is allowed, to avoid taxing the same sale or exchange under both the B&O and capital gains taxes.

Out-of-state credit: A credit against the capital gains tax is allowed for the amount of capital gains taxes paid to another taxing jurisdiction on capital gains derived from sources within the other taxing jurisdiction to the extent the capital gains are included in the measure of the Washington capital gains tax.

FILING DEADLINES
Washington capital gains tax returns, any required information returns, and payments are due at the same time that the taxpayer's federal income tax return for the taxable year is due. Individuals receiving a federal tax filing extension also qualify for a state capital gains tax filing extension, but the tax is still due on the original filing date.

REVENUES
Annual revenues collected during calendar year 2023 will be deposited as follows:
- The first $350 million to the Education Legacy Trust Account,
- The next $100 million to the State General Fund, and
- The remainder to the new Taxpayer Fairness Account.

Beginning with revenues collected during Calendar Year 2024, the amounts deposited to the Education Legacy Trust Account and the State General Fund will be adjusted annually for inflation.

EFFECTIVE DATE:

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The bill takes effect 90 days after final adjournment of the session in which it is enacted.

ASSUMPTIONS:
- Approximately 8,000 taxpayers pay capital gains taxes for taxes due in 2023.
- The NEW fund in the table above corresponds to the Taxpayer Fairness Account, created under this proposal.
- The tax takes effect on January 1, 2022, and the first payments are due on or about April 17, 2023.
- Because we do not have federal tax return data on nonresident individuals, this fiscal estimate assumes that the long-term net capital gains reported on Washington residents' federal tax returns are equivalent to the Washington capital gains for all taxpayers, including nonresidents.
- Taxpayers may only consider losses allocated to the state under Section 108 when calculating their adjusted capital gains and Washington capital gains. Losses not allocated to the state under Section 108 cannot be used to reduce a taxpayer's adjusted capital gains and Washington capital gains. Limiting available losses to losses allocated to the state has a minimal but positive impact on revenues. However, for the purpose of this estimate, we assume the impact is zero due to a lack of information about how gains and losses are allocated to the state in the data available.
- Decoupling the Federal Opportunity Zone program from the Washington capital gains tax will have a minimal but positive impact on revenues.
- No estimated payments or withholdings are made during the year.
- For all asset types excluded from the tax, the percentage of a Washington taxpayer's gains resulting from sales or exchanges of these assets aligns with percentages reported in IRS / SOI statistical tables for all taxpayers nationwide.
- Future amounts of capital gains for Washington taxpayers equal the amounts reported in 2018 tax returns, adjusted by using forecasted rates of growth and decay.
- The ratio of the out-of-state credit to gross tax is the same for Tax Years 2017 and 2018.
- Compliance is 85 percent in the first year, 90 percent in the second year, and 95 percent thereafter.

For the purpose of estimating the amount of the qualified family-owned small business deduction, we assume:
- All Washington firms with $10 million or less in annual gross revenue will qualify as a qualified family-owned small business.
- To the extent that capital gains are derived from either (1) the sale of substantially all of the fair market value of the assets of a qualified family-owned small business, or (2) the sale of substantially all of a taxpayer's qualifying interest in a qualified family-owned small business, the capital gains from such a sale will qualify for a deduction.
- The percentage of all capital gains qualifying for the qualified family-owned small business deduction remains constant year-to-year. This assumption has the same revenue impact as annually inflating the gross revenue limitation would have.

For the purpose of estimating the amount of pass-through capital gains exempted, we assume:
- The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. S-corporations and partnerships for Tax Year 2014.
- Sales or exchanges from 89 percent of depreciable business assets are exempt.
- Sales or exchanges from all real estate held by these entities are exempt.
- Sales or exchanges from 15 percent of partnership, S corporation, and estate or trust interests are exempt as the sale or exchange of a controlling interest in an entity

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Narrative Explanation (Required for Indeterminate Cash Receipts)

that owns real property in this state.

Due to a lack of available information about the amount of goodwill associated with sales of franchised auto dealerships, we assume the amount of goodwill associated with the sale of a franchised auto dealership is:
- For pass-through capital gains, the amount of amortizable intangible assets held by businesses in the “Motor vehicle dealers and parts dealers” sector, and
- For “Other Assets” sold or exchanged for capital gains, we assume that 51 percent of sales or exchanges of such assets are exempt, rather than 50 percent. The Other Assets category is in IRS table 2A, listed in the Data Sources section.

B&O tax credit:
- Each taxpayer maximizes the amount of the credit by applying the standard deduction first to gains realized from personal sources, then applying any remainder to gains from business sources.
- 10 percent of taxable capital gains resulting from business activity in the finance sector is not subject to the B&O tax, because it comes from private equity firms and hedge funds, which qualify for the investment income deduction against the B&O tax.
- The Financial Institutions Surtax for the B&O tax remains in effect.

DATA SOURCES:
- Internal Revenue Service (IRS) - Individual income tax returns data, Tax Years 2017 and 2018.
- IRS: SOI Tax Stats - Sales of Capital Assets Report on Individual Tax Returns, Tables 2A and 1C, Tax Years 2008 to 2012.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120S - Table 6.1. Balance Sheet and Income Statement Items, by Major Industry, Tax Year 2014.
- IRS Statistics of Income: Table 3. All Partnerships: Balance Sheets by Industrial Group, Tax Year 2016.
- IRS Statistics of Income: Table 5. Partnerships with Income (or Loss) Allocated to Partners, by Selected Industrial Group, Tax Year 2014.
- Department of Revenue: Excise tax data, Calendar Year 2020, Q2, used to estimate effective B&O tax rates for finance sector firms.
- Department of Revenue: Excise tax data, Fiscal Year 2018, used to estimate percentage of gross revenues that come from small businesses.
- Personal Income Forecast (November 2020). This includes:
  --- The U.S. Congressional Budget Office: Capital gains realizations forecast (all states), August 2020, used to grow capital gains amounts.
  --- Economic and Revenue Forecast Council, November 2020, Seattle CPI-Urban (U.S. BLS) forecast, used to adjust amounts for inflation.

REVENUE IMPACT:

State Government (cash basis, $000):
FY 2022 - $ 0
FY 2023 - $ 483,000

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FY 2024 - $ 514,000
FY 2025 - $ 552,000
FY 2026 - $ 569,000
FY 2027 - $ 586,000

Agency Preparation: Sara del Moral	Phone: 360-534-1525	Date: 3/10/2021 2:37:18 pm
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 3/10/2021 2:37:18 pm
OFM Review:	Phone:	Date: