

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax
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## 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	(8,000,000)	0	0	(18,000,000)	0	0	(20,000,000)	0	0
Office of Attorney General	0	0	122,000	0	0	84,000	0	0	46,000
Department of Revenue	(77,000,000)	415,000,000	442,000,000	(170,000,000)	840,000,000	974,000,000	(185,000,000)	865,000,000	1,053,000,000
<b>Total \$</b>	<b>(85,000,000)</b>	<b>415,000,000</b>	<b>442,122,000</b>	<b>(188,000,000)</b>	<b>840,000,000</b>	<b>974,084,000</b>	<b>(205,000,000)</b>	<b>865,000,000</b>	<b>1,053,046,000</b>

## 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	.0	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	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	19.9	6,896,100	6,896,100	6,896,100	19.2	6,948,100	6,948,100	6,948,100	15.7	4,211,600	4,211,600	4,211,600
Department of Corrections	.0	0	0	0	.0	0	0	0	.0	0	0	0
<b>Total \$</b>	<b>20.3</b>	<b>6,896,100</b>	<b>6,896,100</b>	<b>7,018,100</b>	<b>19.5</b>	<b>6,948,100</b>	<b>6,948,100</b>	<b>7,032,100</b>	<b>15.9</b>	<b>4,211,600</b>	<b>4,211,600</b>	<b>4,257,600</b>

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
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

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	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
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

<b>Prepared by:</b> Ramona Nabors, OFM	<b>Phone:</b> (360) 902-0547	<b>Date Published:</b> Revised 6/22/2021
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 055-Administrative Office of the Courts
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

NONE

**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 for 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.

Contact	Phone:	Date: 04/26/2021
Agency Preparation: Sam Knutson	Phone: 360-704-5528	Date: 04/29/2021
Agency Approval: Ramsey Radwan	Phone: 360-357-2406	Date: 04/29/2021
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 04/29/2021

169,909.00

Form FN (Rev 1/00)

Request # 5096 PL-1

Bill # 5096 S SB PL

## 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)

NONE

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

NONE

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

NONE

### 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 describe potential financing methods*

NONE

169,909.00

Form FN (Rev 1/00)

## **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 15(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 15(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

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 090-Office of State Treasurer
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## 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		(8,000,000)	(8,000,000)	(18,000,000)	(20,000,000)
Workforce Education Investment Account-State 24J-1		8,000,000	8,000,000	18,000,000	20,000,000
<b>Total \$</b>					

### 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:	Phone:	Date: 04/26/2021
Agency Preparation: Dan Mason	Phone: (360) 902-8990	Date: 04/28/2021
Agency Approval: Dan Mason	Phone: (360) 902-8990	Date: 04/28/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 04/29/2021

## 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 PL imposes a capital gains tax. Under section 16 (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.

### 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

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 100-Office of Attorney General
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## 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
<b>Total \$</b>	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
<b>Account</b>					
Legal Services Revolving Account-State 405-1	61,000	61,000	122,000	84,000	46,000
<b>Total \$</b>	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:	Phone:	Date: 04/26/2021
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 04/26/2021
Agency Approval: Dianna Wilks	Phone: 360-709-6463	Date: 04/26/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 05/04/2021

## 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 4 is a new section that defines various terms, including “individual” as “a natural person” and “Washington capital gains” as “an individual’s adjusted capital gain, as modified in Section 7 of this act, for each return filed under this chapter.”

Section 5 is a new section imposing, beginning January 1, 2022, an excise tax on the sale or exchange of long-term capital assets. The tax is imposed only on individuals and is equal to seven percent multiplied by an individual’s Washington taxable gains. The tax is declared “necessary for the support of state government and its existing public institutions.”

Section 6 is a new section providing exemptions.

Sections 7 and 9 are new sections providing deductions, including a standard deduction of \$250,000 as adjusted pursuant to Section 17. The deduction in Section 9 for charitable deductions is limited to qualified organizations that are principally directed or managed within the state of Washington.

Section 11 is a new section addressing the allocation of long-term capital gains and losses to Washington.

Section 12 is a new section addressing the filing of returns.

Section 13 is a new section addressing joint filers.

Section 14 is a new section providing that RCW 82.32 applies to the administration of the capital gains tax.

Section 15 is a new section making it a class C felony for a taxpayer to knowingly attempt to evade the tax imposed by this act and a gross misdemeanor to fail to pay the tax, make returns, keep records, or supply information required by RCW 82.32.

Section 16 is a new section providing a business and occupation (B&O) tax credit.

Section 17 is a new section requiring the Department of Revenue to annually adjust the distribution amounts in Section 2(1)(a), the standard deduction amount in Sections 4(13) and 7(1), and the worldwide gross revenue amount in Section 8.

Section 20 is a new section providing that if Section 5 is declared unconstitutional or otherwise invalid, then Section 16 is null and void in its entirety and the B&O tax credits under that section must be repaid.

Section 21 is a severability clause.

### 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 cost estimates. These costs will be billed through the revolving account to the client agency.

The client agency is the Department of Revenue. 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
<b>Total \$</b>			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		
<b>Total \$</b>	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	
<b>Total FTEs</b>		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
<b>Total \$</b>	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

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 101-Caseload Forecast Council
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## Part I: Estimates

**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:	Phone:	Date: 04/26/2021
Agency Preparation: Clela Steelhammer	Phone: 360-664-9381	Date: 04/27/2021
Agency Approval: Clela Steelhammer	Phone: 360-664-9381	Date: 04/27/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 04/27/2021

## 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 - PL**

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

**101 – Caseload Forecast Council**  
**April 27, 2021**

### **SUMMARY**

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

- Section 15 Establishes the unranked Class C felony offense concerning taxpayer evasion of any tax imposed in this chapter.
- Section 15 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 offense 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.

# Department of Revenue Fiscal Note

Revised

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 140-Department of Revenue
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## Part I: Estimates

No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax		(77,000,000)	(77,000,000)	(170,000,000)	(185,000,000)
Education Legacy Trust Account-State 00 - 00 -		500,000,000	500,000,000	1,028,000,000	1,070,000,000
Common School Construction Account-State 00 - 00 -		27,000,000	27,000,000	134,000,000	188,000,000
Workforce Educationa Investment Account-State 01 - Taxes 05 - Bus and Occup Tax		(8,000,000)	(8,000,000)	(18,000,000)	(20,000,000)
<b>Total \$</b>		442,000,000	442,000,000	974,000,000	1,053,000,000

### Estimated Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	15.4	24.3	19.9	19.2	15.7
<b>Account</b>					
GF-STATE-State 001-1	2,561,900	4,334,200	6,896,100	6,948,100	4,211,600
<b>Total \$</b>	2,561,900	4,334,200	6,896,100	6,948,100	4,211,600

### 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:	Phone:	Date: 04/26/2021
Agency Preparation: Sara del Moral	Phone: 360-534-1525	Date: 06/21/2021
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 06/21/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 06/22/2021

Request # 5096-14-2

## 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 revised fiscal note reflects a correction to the funds impacted under this proposal.

Note: This fiscal note reflects language in ESSB 5096 as passed in the 2021 Legislative Session.

#### CURRENT LAW:

There is no capital gains tax in Washington State.

#### 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.

#### 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 are not included in the calculation of an individual's adjusted capital gains and Washington capital gains.

#### EXEMPTIONS BASED ON TYPE OF ASSET SOLD OR EXCHANGED

The Washington capital gains tax does not apply to the following :

- The sale or exchange of real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where the real property is located. "Real estate" means land and fixtures affixed to land. The term also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.
- The sale or exchange of an interest in a privately held entity to the extent that long-term capital gains or losses from such sale or exchange are directly attributable to the real estate owned directly by the 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.
- The sale or exchange of commercial fishing privileges.

#### DEDUCTIONS

Standard Deduction: A standard deduction of \$250,000 per individual is available. For married couples filing separately and registered domestic partners filing separately, the combined standard deduction is limited to \$250,000. The standard deduction is adjusted annually for inflation.

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.

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 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 family-owned small business :

- The taxpayer, or their family, owned or had a qualifying interest in the business for at least five years immediately prior to the sale of assets or transfer of interest.
- During the ten years immediately prior to the sale of assets or transfer of interest, there must be periods aggregating at least five years during which the taxpayer or a member of their family materially participated in the operation of the trade or business. However, the material participation requirement does not apply to sales of assets or transfers of interests to qualified heirs (certain family members of the taxpayer).
- The 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.

Qualified interest:

- 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.

Charitable Donations Deduction: A taxpayer may deduct from their Washington capital gains the amount donated by the taxpayer to one or more qualified organizations during the same taxable year in excess of \$250,000. The deduction may not exceed \$100,000 for the taxable year. The threshold donation amount and deduction cap are adjusted annually for inflation.

For purposes of this deduction, the following definitions apply :

"Nonprofit organization" means an organization exempt from tax under section 501 (c)(3) of the internal revenue code, 26 U.S.C. Sec. 501(c)(3).

"Qualified organization" means a nonprofit organization or any other organization that is: ( i) eligible to receive tax-deductible charitable contributions under the internal revenue code; and (ii) principally directed or managed within 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 Washington capital gains taxes.

Out-of-state credit: A credit against the Washington 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 supporting documents, 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 Washington capital gains tax filing extension, but the tax is still due on the original filing date.

## DISTRIBUTION OF REVENUES

All revenues will be distributed as follows:

- The first \$500 million collected each fiscal year shall be deposited into the education legacy trust account created in RCW 83.100.230; and
- Any remaining amounts collected each fiscal year shall be deposited into the common school construction account.

The amount deposited into the education legacy trust account is 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 7,000 taxpayers pay Washington capital gains tax for taxes due in 2023.
- 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 11 when calculating their adjusted capital gains and Washington capital gains. Losses not allocated to the state under Section 11 cannot be used to reduce a taxpayer's adjusted capital gains. Limiting available losses to losses allocated to the state would have a minimal but positive impact on revenues. 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.
- Determining federal net long-term capital gains as if the alternative minimum tax did not exist will have a minimal but indeterminate 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 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 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 the entity interest sale or exchange exemption under Section 6 (2), we estimate the amount of corporate stock capital gains exempted using the following assumptions:

- 87 percent of corporate stock capital gains are associated with privately held firms.
- 89 percent of depreciable business assets held by C-corporations consists of real estate.
- The types of assets sold or exchanged for capital gains align with the types of assets held by all U.S. C-corporations for Tax Year 2013, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets. For instance, if 16 percent of C-corporation assets are real property, then 16 percent of corporate stock capital gains result from the sale or exchange of real property.

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, and capital gains resulting from such exchanges are proportional to the assets sold or exchanged, across all types of assets.
- Sales or exchanges from 89 percent of depreciable business assets consists of real estate improvements.
- Sales or exchanges from all real estate held by these entities are exempt.

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.

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 the charitable donations deduction, we assume :

- Current charitable contribution levels reported for federal income tax purposes remain constant. If charitable contribution amounts increase after the capital gains tax goes into effect, the revenues estimated will decrease.
- All charitable contributions reported for federal income tax purposes qualify for the charitable donations deduction in this legislation.

B&O tax credit:

- Each taxpayer maximizes the amount of the credit by applying the standard exemption 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.
- IRS Statistics of Income: Returns of Active Corporations, Form 1120 - Table 16. Balance Sheet, Income Statement, Tax, and Selected Other Items, by Major Industry, Tax Year 2013.
- 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 ESTIMATES

### TOTAL REVENUE IMPACT:

#### State Government (cash basis, \$000):

FY 2022 -	\$	0
FY 2023 -	\$	442,000
FY 2024 -	\$	469,000
FY 2025 -	\$	505,000
FY 2026 -	\$	519,000
FY 2027 -	\$	534,000

Local Government, if applicable (cash basis, \$000): 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*

### ASSUMPTIONS:

- This estimate affects 7,000 taxpayers.
- Taxpayers will not be required to make estimated payments.

### FIRST YEAR COSTS:

The Department will incur total costs of \$2,561,900 in Fiscal Year 2022. These costs include :

Labor Costs - Time and effort equates to 15.44 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.

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- 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 - \$606,600.

- Contract computer system programming.
- Purchase additional server equipment.
- Print and mail outreach materials, general correspondence and notices to paper filers.
- Legal assistance from the Office of the Attorney General.

## SECOND YEAR COSTS:

The Department will incur total costs of \$4,334,200 in Fiscal Year 2023. These costs include :

Labor Costs - Time and effort equates to 24.3 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 - \$1,737,500.

- Contract computer system programming.
- Purchase additional server equipment.
- Purchase additional scanning equipment.
- Acquire additional seat licenses for the Telephone Information Center.
- Print and mail a special notice to affected taxpayers.
- 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 \$4,077,000 in Fiscal Year 2024. These costs include :

Labor Costs - Time and effort equates to 20.0 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 - \$2,069,500.

- 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 \$2,871,100 in Fiscal Year 2025. These costs include :

Labor Costs - Time and effort equates to 18.4 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	15.4	24.3	19.9	19.2	15.7
A-Salaries and Wages	1,213,500	1,627,100	2,840,600	2,481,400	2,029,800
B-Employee Benefits	436,700	585,800	1,022,500	893,300	730,800
C-Professional Service Contracts	500,000	1,500,000	2,000,000	3,000,000	1,000,000
E-Goods and Other Services	263,400	370,000	633,400	514,700	400,800
G-Travel	300	600	900	600	600
J-Capital Outlays	148,000	250,700	398,700	58,100	49,600
<b>Total \$</b>	<b>\$2,561,900</b>	<b>\$4,334,200</b>	<b>\$6,896,100</b>	<b>\$6,948,100</b>	<b>\$4,211,600</b>

#### 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
ADM ASST 3	43,392		0.1	0.1	0.1	
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		0.5	0.3	0.5	0.5
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	3.6	3.7	3.7	2.4	1.8
MGMT ANALYST5	78,408	1.4	1.1	1.3	0.4	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		2.2	1.1	2.1	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	2.0	2.3	1.8	1.1
TAX POLICY SP 4	88,644	0.6	0.4	0.5	0.4	0.2
WMS BAND 2	89,018	1.1	1.0	1.1	1.0	1.0
WMS BAND 3	101,257	0.0		0.0		
<b>Total FTEs</b>		<b>15.4</b>	<b>24.3</b>	<b>19.9</b>	<b>19.2</b>	<b>15.7</b>

**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 describe 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.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax	<b>Agency:</b> 310-Department of Corrections
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## Part I: Estimates

**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:	Phone:	Date: 04/26/2021
Agency Preparation: Scherry Sinclair	Phone: 360-725-8846	Date: 05/04/2021
Agency Approval: Ronell Witt	Phone: 3607258989	Date: 05/04/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 05/12/2021

## 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.*

Beginning January 1, 2022, this bill enacts an excise tax on gains from the sale or exchange of certain capital assets. Only individuals are subject to the payment of the tax.

Section 3 is amending expenditures from the education legacy trust account to include supporting early learning and child care programs. This amendment removes end dates for this support making it on-going.

Below are sections that have not changed from previous version :

Section 4 is a new section that defines various terms, including defining “individual” as “a natural person”, “resident” means an “individual” and “Washington capital gains” as “an individual’s adjusted capital gains less \$250,000 as provided in Section 7 of this action and adjusted annually under Section 16 of this act.”

Section 5 is a new section imposing an excise tax on the sale or exchange of long-term capital assets beginning January 1, 2022. The tax is imposed only on individuals and is equal to seven percent multiplied by the individual’s Washington capital gains.

Section 6 is a new section providing exemptions.

Sections 7, 8 & 9 are new sections providing deductions.

Section 10 & 11 is a new section addressing the allocation of long-term capital gains and losses to Washington.

Section 12 a new section addressing the filing of return.

Section 13 is a new section addressing joint filers.

Section 14 is a new section providing the RCW 82.32 apply to the administration of the capital gains tax.

Section 15 is a new section making it a class C felony for a taxpayer to knowingly attempt to evade the tax imposed by this act and a gross misdemeanor to knowingly fail to pay the tax, make returns, keep records, or supply information as required by RCW 82.32.

Section 16 is a new section providing a business & occupation tax credit.

Section 17 is a new section requiring the Department of Revenue to annually adjust the standard deduction amount in Sections 4(13) and 7(1) and the worldwide gross revenue amount in Section 8.

Section 21 is a severability clause.

### 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.*

### 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.*

DOC assumes no fiscal impact as a result of this bill.

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

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.

Given there are no impacts on prison beds, DOC assumes no fiscal impact related to this bill.

### **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**

# LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

<b>Bill Number:</b> 5096 S SB PL	<b>Title:</b> Capital gains tax
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## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- Cities:
- 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:
- 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: Rebecca Duncan	Phone: 360-725-5040	Date: 05/03/2021
Leg. Committee Contact:	Phone:	Date: 04/26/2021
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 05/03/2021
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 06/09/2021

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

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

#### **CHANGES FROM PRIOR BILL VERSION:**

Changes to section 2 would declare that all taxes , interest, and penalties collected under this chapter shall be distributed as follows:

- (a) The first \$500,000,000 collected each fiscal year shall be deposited into the education legacy trust account created in RCW 83.100.230; and
  - (b) Any remainder collected each fiscal year shall be deposited into the common school construction account .
- (2) The amounts specified under subsection (1)(a) of this section shall be adjusted annually as provided under section 17 of this act .

A new section, section 9, would provide the option for a taxpayer to deduct donations (to certain qualifying organizations) exceeding \$250,000 from their Washington capital gains .

These changes would not affect the local government fiscal impact analysis .

#### **SUMMARY OF CURRENT BILL VERSION:**

This legislation would create a seven percent tax on the sale of exchanging stocks , bonds, and other capital assets where the profit is in excess of \$250,000 annually. Revenue generated from this tax would fund K-12 education , early learning, and child care, as well as advance the State's goal of providing high-quality education and child care to every child in the state . Taxpayers that knowingly evade payment of this new tax, or who knowingly fail to pay the tax, make returns, keep records, or supply information, would be subject to certain punishments under state law .

Section 15 would declare that any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW. In addition, any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, would be guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

### **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.*

#### **NO CHANGE FROM PRIOR BILL:**

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.*

### **NO CHANGE FROM PRIOR BILL:**

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