BILL REQ. #: S-2901.3/13 3rd draft
ATTY/TYPIST: JA:1e1
BRIEF DESCRIPTION: Concerning state government.
AN ACT Relating to state government; amending RCW 83.100.020, 83.100.040, 83.100.047, and 83.100.120; adding a new section to chapter 83.100 RCW; adding new sections to 2013 1st sp.s. c ... (ESSB 5034) (uncodified); creating new sections; making appropriations; providing effective dates; providing an expiration date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. (1) In 2005, to address an unexpected significant loss of tax revenue resulting from the Estate of Hemphill decision and to provide additional funding for public education, the legislature enacted a stand-alone estate and transfer tax, effective May 17, 2005. The stand-alone estate and transfer tax applies to the transfer of property at death. By defining the term "transfer" to mean a "transfer as used in section 2001 of the internal revenue code," the legislature clearly expressed its intent that a "transfer" for purposes of determining the federal taxable estate is also a "transfer" for purposes of determining the Washington taxable estate.

(2) In In re Estate of Bracken, Docket No. 84114-4, the Washington
The legislature finds that it is well established that the term "transfer" as used in the federal estate tax code is construed broadly and extends to the "shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property" that occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

(4) The legislature further finds that: The Bracken decision held certain qualified terminable interest property (QTIP) of married couples was transferred without incurring Washington state estate tax liability, which: (a) Creates an inequity never intended by the legislature because unmarried individuals did not enjoy any similar opportunities to avoid or greatly reduce their potential Washington estate tax liability; and (b) may create disparate treatment between QTIP property and other property transferred between spouses that is eligible for the marital deduction.

(5) Therefore, the legislature finds that it is necessary to reinstate the legislature's intended meaning when it enacted the estate tax, restore parity between married couples and unmarried individuals, restore parity between QTIP property and other property eligible for the marital deduction, and prevent the adverse fiscal impacts of the Bracken decision by reaffirming its intent that the term "transfer" as used in the Washington estate and transfer tax is to be given its broadest possible meaning consistent with established United States supreme court precedents, subject only to the limits and exceptions expressly provided by the legislature.

(6) As curative, clarifying, and remedial, the legislature intends for this act to apply both prospectively and retroactively to estates of decedents dying on or after May 17, 2005.

**Sec. 2.** RCW 83.100.020 and 2013 c 23 s 341 are each amended to read as follows:

(As used in this chapter:) The following definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Applicable exclusion amount" means:

(i) One million five hundred thousand dollars for decedents dying before January 1, 2006;
(ii) Two million dollars for estates of decedents dying on or after January 2006, and before January 1, 2014; and

(iii) For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the amount in (a)(ii) of this subsection must be adjusted annually, except as otherwise provided in this subsection (1)(a)(iii). The annual adjustment is determined by multiplying two million dollars by the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2012, and rounding the result to the nearest one thousand dollars. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under this subsection (1)(a)(iii) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(b) For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States bureau of labor statistics.

(2) "Decedent" means a deceased individual.

(3) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him or her by the director.

(4) "Federal return" means any tax return required by chapter 11 of the internal revenue code.

(5) "Federal tax" means a tax under chapter 11 of the internal revenue code.

(6) "Gross estate" means "gross estate" as defined and used in section 2031 of the internal revenue code.

(7) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof.

(8) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the internal revenue code, such as the personal representative of an estate.
"Property" means property included in the gross estate.

"Resident" means a decedent who was domiciled in Washington at time of death.

"Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120.

"Transfer" means "transfer" as used in section 2001 of the internal revenue code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes.

"Internal revenue code" means, for the purposes of this chapter and RCW 83.110.010, the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2005.

"Washington taxable estate" means the federal taxable estate, less: (a) One million five hundred thousand dollars for decedents dying before January 1, 2006; and (b) two million dollars for decedents dying on or after January 1, 2006; and (c) the amount of any deduction allowed under RCW 83.100.046; and) and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the internal revenue code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005, (a) plus amounts required to be added to the Washington taxable estate under RCW 83.100.047, (b) less: (i) The applicable exclusion amount; (ii) the amount of any deduction allowed under RCW 83.100.046; (iii) amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047; and (iv) amounts allowed to be deducted under section 12 of this act.

"Federal taxable estate" means the taxable estate as determined under chapter 11 of the internal revenue code without regard to: (a) The termination of the federal estate tax under section 2210 of the internal revenue code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the internal revenue code.
Sec. 3.  RCW 83.100.040 and 2010 c 106 s 234 are each amended to read as follows:

(1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

<table>
<thead>
<tr>
<th>If Washington Taxable Estate is at least</th>
<th>But Less Than</th>
<th>The amount of Tax Equals</th>
<th>Of Washington Taxable Estate Value Greater than</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$1,000,000</td>
<td>$0</td>
<td>10.00%</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$2,000,000</td>
<td>$100,000</td>
<td>14.00%</td>
</tr>
<tr>
<td>$2,000,000</td>
<td>$3,000,000</td>
<td>$240,000</td>
<td>15.00%</td>
</tr>
<tr>
<td>$3,000,000</td>
<td>$4,000,000</td>
<td>$390,000</td>
<td>16.00%</td>
</tr>
<tr>
<td>$4,000,000</td>
<td>$6,000,000</td>
<td>$550,000</td>
<td>17.00%</td>
</tr>
<tr>
<td>$6,000,000</td>
<td>$7,000,000</td>
<td>$890,000</td>
<td>18.00%</td>
</tr>
<tr>
<td>$7,000,000</td>
<td>$9,000,000</td>
<td>$1,070,000</td>
<td>18.50%</td>
</tr>
<tr>
<td>$9,000,000</td>
<td>$1,000,000</td>
<td>$1,440,000</td>
<td>20.00%</td>
</tr>
</tbody>
</table>

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 must be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax.
Sec. 4. RCW 83.100.047 and 2005 c 516 s 13 are each amended to read as follows:

(1) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code, for the purpose of determining the amount of tax due under this chapter. The election (shall be) is binding on the estate and the beneficiaries, consistent with the internal revenue code. All other elections or valuations on the Washington return (shall) must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986((shall)) are not (be) allowed as deductions in computing the amount of tax due under this chapter.

(3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:

(a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.

(b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.

Sec. 5. RCW 83.100.047 and 2009 c 521 s 192 are each amended to read as follows:

(1)(a) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed,
the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code and (b) of this subsection, for the purpose of determining the amount of tax due under this chapter. The election (shall be) is binding on the estate and the beneficiaries, consistent with the internal revenue code and (b) of this subsection. All other elections or valuations on the Washington return (shall) must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(b) The department (shall) must provide by rule that a state registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the internal revenue code but regardless of whether such interest would be deductible from the federal gross estate under section 2056 or 2056A of the internal revenue code.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986 (shall) are not (be) allowed as deductions in computing the amount of tax due under this chapter.

(3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:

(a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.

(b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate.

Sec. 6. RCW 83.100.120 and 1981 2nd ex.s. c 7 s 83.100.120 are each amended to read as follows:
(1)(a) Except as otherwise provided in this subsection, any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the taxes due under this chapter ((shall)) must be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(b) For the estates of decedents dying prior to April 9, 2006, a personal representative is not personally liable for taxes due on the value of any property included in the gross estate and the Washington taxable estate as a result of section 2044 of the internal revenue code unless the property is located in the state of Washington or the property has or will come into the possession or control of the personal representative.

(2) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Washington without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is liable for the taxes due under this chapter to the extent of the value of the property delivered. Security for payment of the taxes due under this chapter ((shall)) must be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Washington by such a person.

(3) For the purposes of this section, persons who do not have possession of a decedent's property include anyone not responsible primarily for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(4) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of
the decedent may rely upon the release certificate or the release of
nonliability certificate, furnished by the department to the personal
representative, as evidence of compliance with the requirements of this
chapter, and make such deliveries and transfers as the personal
representative may direct without being liable for any taxes due under
this chapter.

NEW SECTION. Sec. 7. A new section is added to 2013 1st sp.s. c
... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF COMMERCE

General Fund--State Appropriation (FY 2014) . . . . . . . . $20,743,000
General Fund--State Appropriation (FY 2015) . . . . . . . . $20,745,000
Home Security Fund Account--State Appropriation . . . . $18,641,000
Affordable Housing for All Account--State Appropriation . . $7,219,000

TOTAL APPROPRIATION . . . . . . . . . . . . . . . . . . . . . . $67,348,000

The appropriations in this section are subject to the following
conditions and limitations: The appropriations in this section are
provided solely for the housing and essential needs program.

NEW SECTION. Sec. 8. A new section is added to 2013 1st sp.s. c
... (ESSB 5034) (uncodified) to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT--RESTORATION OF AGENCY
ADMINISTRATIVE EFFICIENCY REDUCTIONS

General Fund--State Appropriation (FY 2014) . . . . . . . . $32,983,000
General Fund--State Appropriation (FY 2015) . . . . . . . . $32,984,000

TOTAL APPROPRIATION . . . . . . . . . . . . . . . . . . . . . . $65,967,000

The appropriations in this section are subject to the following
conditions and limitations: The appropriations in this section are
provided solely for allocation to state agencies by the office of
financial management to restore a portion of the funding reductions
reflecting state agency administrative efficiencies.

NEW SECTION. Sec. 9. A new section is added to 2013 1st sp.s. c
... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--ECONOMIC SERVICES
PROGRAM

General Fund--State Appropriation (FY 2014) . . . . . . . . $23,206,000
General Fund--State Appropriation (FY 2015) . . . . . . . . $28,201,000
The appropriations in this section are subject to the following conditions and limitations:

(1) $5,262,000 of the general fund--state appropriation for fiscal year 2014, $5,263,000 of the general fund--state appropriation for fiscal year 2015, and $10,935,000 of the general fund--federal appropriation are provided solely to restore incapacity evaluations and supplemental security income facilitation services.

(2) $17,944,000 of the general fund--state appropriation for fiscal year 2014 and $22,938,000 of the general fund--state appropriation for fiscal year 2015 are provided solely to restore and continue the aged, blind, and disabled cash programs at anticipated levels.

NEW SECTION. Sec. 10. Sections 2 and 4 of this act apply both prospectively and retroactively to all estates of decedents dying on or after May 17, 2005.

NEW SECTION. Sec. 11. This act does not affect any final judgment, no longer subject to appeal, entered by a court of competent jurisdiction before the effective date of this section.

NEW SECTION. Sec. 12. A new section is added to chapter 83.100 RCW to read as follows:

(1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for the value of qualified family-owned business interests of the decedent. This deduction applies only if the qualified family-owned business interest is acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2) and the decedent was at the time of his or her death a citizen or resident of the United States. Only property in the federal taxable estate and not deductible under RCW 83.100.046 may be deducted under this subsection. For the purposes of determining the deduction amount, the value of property is its value as used to determine the value of the gross estate. For purposes of this subsection, the following definitions apply:
(a) "Qualified family-owned business interest" has the same meaning as in 26 U.S.C. Sec. 2057(e) of the federal internal revenue code as it exists on January 1, 2013.

(b) "Qualified heir" has the same meaning as in 26 U.S.C. Sec. 2057(i) of the federal internal revenue code as it exists on January 1, 2013.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. Section 4 of this act expires January 1, 2014.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except for section 5 of this act which takes effect January 1, 2014, and sections 7 through 9 of this act which take effect July 1, 2013.

--- END ---