
SUBSTITUTE HOUSE BILL 1797

State of Washington 65th Legislature 2017 Regular Session

By House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives McBride, Kloba, Springer, Robinson, Macri, Frame, Doglio, Chapman, Farrell, Sells, Fey, Senn, Jinkins, Gregerson, and Pollet)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to encouraging affordable housing development and
2 preservation by providing cities limited sales tax remittance for
3 qualifying investments, providing cities and counties authority to
4 use real estate excise taxes to support affordable housing, and
5 providing cities and counties with councilmanic authority to impose
6 the affordable housing sales tax; amending RCW 82.46.037 and
7 82.14.530; adding a new chapter to Title 82 RCW; creating a new
8 section; and providing expiration dates.

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

10 NEW SECTION. **Sec. 1.** (1) The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (a) "Affordable housing" means residential housing units for
14 rental occupancy that are rented or owned by a person or household
15 whose monthly housing costs, including utilities other than
16 telephone, do not exceed thirty percent of the person's or
17 household's monthly income. For purposes of this chapter, "affordable
18 housing" also may include affordable workforce housing, which means
19 affordable housing that supports employment opportunities.

20 (b) "City" means any city or town, including a code city.

21 (c) "Department" means the department of commerce.

1 (d) "Local infrastructure" has the same meaning as provided for
2 "public improvements" under RCW 39.104.020(18).

3 (e) "Local sales and use tax" means the local revenue derived
4 from the imposition of taxes authorized in RCW 82.14.030.

5 (f) "Low-income housing" means residential housing units that are
6 available to persons with annual incomes at or below sixty percent of
7 the county's median income as determined by the office of financial
8 management.

9 (2) This section expires July 1, 2027.

10 NEW SECTION. **Sec. 2.** (1)(a) Subject to the requirements in
11 section 4 of this act, a city that builds affordable housing, or
12 enters into a development agreement as authorized under RCW
13 36.70B.170 with a private developer to build affordable housing, may
14 receive a remittance from the department of revenue that is the
15 equivalent of a 4.37 percent sales tax on the sale of or charge made
16 for labor and services rendered in respect to the construction of
17 such affordable housing. The remittance received by a city under this
18 section must be credited against the sales tax due to the state under
19 chapter 82.08 RCW on the same sales.

20 (b) The residential units for which the city's remittance
21 application was approved must remain affordable housing for at least
22 twenty-five years after the date the department of revenue approved
23 the city's application for a remittance.

24 (c) If the residential units do not meet the requirements in (b)
25 of this subsection, the city must notify the department of revenue
26 and repay any remittance received under (a) of this subsection on the
27 project. The department of revenue may not assess penalties and
28 interest as provided in chapter 82.32 RCW on the amount due if paid
29 within ninety days from the date when the residential units no longer
30 meet the requirements in (b) of this subsection.

31 (2) Subject to the requirements in section 4 of this act, a city
32 that coordinates with a housing authority or developer for building
33 approved local infrastructure to facilitate the development of
34 affordable housing may receive a remittance from the department of
35 revenue that is the equivalent of a 4.37 percent sales tax on the
36 sale of or charge made for labor and services rendered in respect to
37 the construction of such local infrastructure. The remittance
38 received by the city under this section must be credited against the

1 sales tax due to the state under chapter 82.08 RCW on the same sales,
2 and must be used to finance the approved infrastructure.

3 (3) This section expires July 1, 2027.

4 NEW SECTION. **Sec. 3.** (1) If a city's application for a
5 remittance is approved under section 4 of this act:

6 (a) The city must create an affordable housing and local
7 infrastructure account to be used solely for the city's acquisition
8 or construction of affordable housing or local infrastructure; and

9 (b) The city must deposit into the affordable housing and local
10 infrastructure account created in (a) of this subsection the
11 equivalent of the 0.85 percent local sales and use tax the city
12 estimates will be collected on the construction of the affordable
13 housing or local infrastructure project.

14 (2) This section expires July 1, 2027.

15 NEW SECTION. **Sec. 4.** (1) Prior to applying to receive a
16 remittance under this chapter, a city must apply and be approved for
17 the city's project to construct affordable housing or local
18 infrastructure. The project may include affordable housing only,
19 local infrastructure only, or a combination of the two. The
20 application must be in the manner and form prescribed by the
21 department and must include, but not be limited to:

22 (a) In the case of the affordable housing program:

23 (i) Information establishing the need for affordable housing in
24 that city;

25 (ii) The anticipated cost of building the affordable housing;

26 (iii) The estimated annual operating costs for the affordable
27 housing for twenty-five years;

28 (iv) The amount of the remittance it is requesting; and

29 (v) The date of expected remittance; and

30 (b) In the case of the local infrastructure program:

31 (i) Information establishing that the local infrastructure is
32 needed for an approved private project that will provide affordable
33 residential development;

34 (ii) The anticipated cost of the project;

35 (iii) The amount of remittance it is requesting; and

36 (iv) The date of the expected remittance.

37 (2) Remittance awards must be determined based on:

38 (a) For affordable housing:

- 1 (i) The immediate need for affordable housing in the requesting
2 city;
- 3 (ii) The number of affordable housing units that will be created;
- 4 (iii) The city's rental vacancy rate for residential units; and
- 5 (iv) The speed with which the project can begin; and
- 6 (b) For local infrastructure projects:
- 7 (i) The speed with which the project can begin;
- 8 (ii) The type of residential development being attracted by the
9 infrastructure investment, prioritized as follows:
- 10 (A) Low-income rental residential units;
- 11 (B) Affordable rental residential units;
- 12 (C) Low-income homeownership projects; and
- 13 (D) Affordable homeownership projects; and
- 14 (iii) The extent the project will leverage the public funds with
15 private investment.
- 16 (3)(a) The department must notify the city of approval or denial
17 within sixty days of receipt of application. Determination by the
18 department is final.
- 19 (b) The department may only approve one affordable housing
20 project per city and one local infrastructure project per city. If
21 the city is approved for a combination project that includes both
22 local infrastructure and affordable housing, the city cannot be
23 approved for any additional projects under this chapter.
- 24 (c) Upon approval by the department and after the project has
25 been issued final inspection approval by the local permit issuing
26 authority, the city may apply to the department of revenue for a
27 remittance under this chapter. The remittance application must be
28 submitted in a form and manner as required by the department of
29 revenue.
- 30 (4) The department must accept applications and begin approving
31 project awards no later than January 1, 2023.
- 32 (5) This section expires July 1, 2027.

33 **Sec. 5.** RCW 82.46.037 and 2016 c 138 s 4 are each amended to
34 read as follows:

- 35 (1) A city or county that meets the requirements of subsection
36 (2) of this section may use the greater of one hundred thousand
37 dollars or twenty-five percent of available funds, but not to exceed
38 one million dollars per year, from revenues collected under RCW
39 82.46.035 for:

1 (a) The maintenance of capital projects, as defined in RCW
2 82.46.035(5); ~~((e))~~

3 (b) From July 1, 2017, until June 30, 2022, the acquisition,
4 construction, improvement, or rehabilitation of facilities to provide
5 housing for the homeless; or

6 (c) The planning, acquisition, construction, reconstruction,
7 repair, replacement, rehabilitation, improvement, or maintenance of
8 capital projects as defined in RCW 82.46.010(6)(b) that are not also
9 included within the definition of capital projects in RCW
10 82.46.035(5).

11 (2) A city or county may use revenues pursuant to subsection (1)
12 of this section if:

13 (a) The city or county prepares a written report demonstrating
14 that it has or will have adequate funding from all sources of public
15 funding to pay for all capital projects, as defined in RCW
16 82.46.035(5), identified in its capital facilities plan for the
17 succeeding two-year period; and

18 (b)(i) The city or county has not enacted, after June 9, 2016,
19 any requirement on the listing or sale of real property; or any
20 requirement on landlords, at the time of executing a lease, to
21 perform or provide physical improvements or modifications to real
22 property or fixtures, except if necessary to address an immediate
23 threat to health or safety; ~~((e))~~

24 (ii) Any local requirement adopted by the city or county under
25 (b)(i) of this subsection is: Specifically authorized by RCW
26 35.80.030, 35A.11.020, chapter 7.48 RCW, or chapter 19.27 RCW;
27 specifically authorized by other state or federal law; or a seller or
28 landlord disclosure requirement pursuant to RCW 64.06.080; or

29 (iii) For a city or county using funds under subsection (1)(b) of
30 this section, the requirements of this subsection apply, except that
31 the date for such enactment under (b)(i) of this subsection is ninety
32 days after the effective date of this section.

33 (3) The report prepared under subsection (2)(a) of this section
34 must: (a) Include information necessary to determine compliance with
35 the requirements of subsection (2)(a) of this section; (b) identify
36 how revenues collected under RCW 82.46.035 were used by the city or
37 county during the prior two-year period; (c) identify how funds
38 authorized under subsection (1) of this section will be used during
39 the succeeding two-year period; and (d) identify what percentage of
40 funding for capital projects within the city or county is

1 attributable to revenues under RCW 82.46.035 compared to all other
2 sources of capital project funding. The city or county must prepare
3 and adopt the report as part of its regular, public budget process.

4 ~~(4) ((The authority to use funds as authorized in this section is
5 in addition to the authority to use funds pursuant to RCW
6 82.46.035(7), which remains in effect through December 31, 2016.~~

7 ~~(5))~~ For purposes of this section, "maintenance" means the use
8 of funds for labor and materials that will preserve, prevent the
9 decline of, or extend the useful life of a capital project.
10 "Maintenance" does not include labor or material costs for routine
11 operations of a capital project.

12 **Sec. 6.** RCW 82.14.530 and 2015 3rd sp.s. c 24 s 701 are each
13 amended to read as follows:

14 (1)(a) ~~((A county))~~ The legislative authority of a county with a
15 population of one million five hundred thousand or less may submit an
16 authorizing proposition to the county voters at a special or general
17 election and, if the proposition is approved by a majority of persons
18 voting, impose a sales and use tax in accordance with the terms of
19 this chapter. The legislative authority of a county with a population
20 over one million five hundred thousand may impose a sales and use tax
21 in accordance with the terms of this chapter. The title of each
22 ballot measure must clearly state the purposes for which the proposed
23 sales and use tax will be used. The rate of tax under this section
24 may not exceed one-tenth of one percent of the selling price in the
25 case of a sales tax, or value of the article used, in the case of a
26 use tax.

27 (b)(i) If a county with a population of one million five hundred
28 thousand or less has not imposed the full tax rate authorized under
29 (a) of this subsection within two years of October 9, 2015, any city
30 legislative authority located in that county may submit an
31 authorizing proposition to the city voters at a special or general
32 election and, if the proposition is approved by a majority of persons
33 voting, impose the whole or remainder of the sales and use tax rate
34 in accordance with the terms of this chapter. The title of each
35 ballot measure must clearly state the purposes for which the proposed
36 sales and use tax will be used. The rate of tax under this section
37 may not exceed one-tenth of one percent of the selling price in the
38 case of a sales tax, or value of the article used, in the case of a
39 use tax.

1 (ii) If a county with a population of greater than one million
2 five hundred thousand has not imposed the full tax authorized under
3 (a) of this subsection within three years of October 9, 2015, any
4 city legislative authority located in that county may (~~submit an~~
5 ~~authorizing proposition to the city voters at a special or general~~
6 ~~election and, if the proposition is approved by a majority of persons~~
7 ~~voting,~~) impose the whole or remainder of the sales and use tax rate
8 in accordance with the terms of this chapter. (~~The title of each~~
9 ~~ballot measure must clearly state the purposes for which the proposed~~
10 ~~sales and use tax will be used.~~) The rate of tax under this section
11 may not exceed one-tenth of one percent of the selling price in the
12 case of a sales tax, or value of the article used, in the case of a
13 use tax.

14 (c) If a county imposes a tax authorized under (a) of this
15 subsection after a city located in that county has imposed the tax
16 authorized under (b) of this subsection, the county must provide a
17 credit against its tax for the full amount of tax imposed by a city.

18 (d) The taxes authorized in this subsection are in addition to
19 any other taxes authorized by law and must be collected from persons
20 who are taxable by the state under chapters 82.08 and 82.12 RCW upon
21 the occurrence of any taxable event within the county for a county's
22 tax and within a city for a city's tax.

23 (2)(a) Notwithstanding subsection (4) of this section, a minimum
24 of sixty percent of the moneys collected under this section must be
25 used for the following purposes:

26 (i) Constructing affordable housing, which may include new units
27 of affordable housing within an existing structure, and facilities
28 providing housing-related services; or

29 (ii) Constructing mental and behavioral health-related
30 facilities; or

31 (iii) Funding the operations and maintenance costs of new units
32 of affordable housing and facilities where housing-related programs
33 are provided, or newly constructed evaluation and treatment centers.

34 (b) The affordable housing and facilities providing housing-
35 related programs in (a)(i) of this subsection may only be provided to
36 persons within any of the following population groups whose income is
37 at or below sixty percent of the median income of the county imposing
38 the tax:

39 (i) Persons with mental illness;

40 (ii) Veterans;

1 (iii) Senior citizens;

2 (iv) Homeless, or at-risk of being homeless, families with
3 children;

4 (v) Unaccompanied homeless youth or young adults;

5 (vi) Persons with disabilities; or

6 (vii) Domestic violence survivors.

7 (c) The remainder of the moneys collected under this section must
8 be used for the operation, delivery, or evaluation of mental and
9 behavioral health treatment programs and services or housing-related
10 services.

11 (3) A county that imposes the tax under this section must consult
12 with a city before the county may construct any of the facilities
13 authorized under subsection (2)(a) of this section within the city
14 limits.

15 (4) A county that has not imposed the tax authorized under RCW
16 82.14.460 prior to October 9, 2015, but imposes the tax authorized
17 under this section after a city in that county has imposed the tax
18 authorized under RCW 82.14.460 prior to October 9, 2015, must enter
19 into an interlocal agreement with that city to determine how the
20 services and provisions described in subsection (2) of this section
21 will be allocated and funded in the city.

22 (5) To carry out the purposes of subsection (2)(a) and (b) of
23 this section, the legislative authority of the county or city
24 imposing the tax has the authority to issue general obligation or
25 revenue bonds within the limitations now or hereafter prescribed by
26 the laws of this state, and may use, and is authorized to pledge, up
27 to fifty percent of the moneys collected under this section for
28 repayment of such bonds, in order to finance the provision or
29 construction of affordable housing, facilities where housing-related
30 programs are provided, or evaluation and treatment centers described
31 in subsection (2)(a)(iii) of this section.

32 (6)(a) Moneys collected under this section may be used to offset
33 reductions in state or federal funds for the purposes described in
34 subsection (2) of this section.

35 (b) No more than ten percent of the moneys collected under this
36 section may be used to supplant existing local funds.

37 NEW SECTION. **Sec. 7.** (1) This section is the tax preference
38 performance statement for the tax preference contained in sections 1
39 through 4, chapter . . . , Laws of 2017 (sections 1 through 4 of this

1 act). This preference statement is only intended to be used for
2 subsequent evaluation of the tax preference. It is not intended to
3 create a private right of action by any party or be used to determine
4 eligibility for the preferential tax treatment.

5 (2) The legislature categorizes this tax preference as one
6 intended to provide tax relief as indicated in RCW 82.32.808(2)(e),
7 thereby lowering the cost of constructing affordable housing.

8 (3) It is the legislature's specific public policy objective to
9 encourage cities to support the development of affordable housing in
10 their community. It is the legislature's intent to provide a sales
11 and use tax remittance to cities that invest in the construction of
12 new affordable housing units and infrastructure to support the
13 development of new affordable housing.

14 (4) If a review finds that the affordable units supported by this
15 program are built and maintained at the same cost as the affordable
16 housing programs funded through the housing trust fund or multifamily
17 tax exemption, then the legislature intends to extend the expiration
18 date of the tax preference.

19 (5) In order to obtain the data necessary to perform the review
20 in subsection (4) of this section, the joint legislative audit and
21 review committee may refer to data sources including:

22 (a) The information provided by the city on their application as
23 developed by the department of commerce in consultation with staff
24 from the joint legislative audit and review committee; and

25 (b) Data from the housing trust fund and data from programs
26 funded by the multifamily tax exemption.

27 NEW SECTION. **Sec. 8.** Sections 1 through 4 of this act
28 constitute a new chapter in Title 82 RCW.

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