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SECOND SUBSTITUTE SENATE BILL 5182

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State of Washington

65th Legislature

2018 Regular Session

**By** Senate Human Services & Corrections (originally sponsored by Senators Fain, Frockt, Miloscia, Llias, Walsh, Cleveland, Bailey, Chase, Zeiger, Rolfes, Keiser, Darneille, Palumbo, Pedersen, and Conway)

READ FIRST TIME 01/17/18.

1 AN ACT Relating to providing local governments with options to  
2 preserve affordable housing in their communities; and adding a new  
3 chapter to Title 84 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Families, senior citizens, and workers with fewer financial  
7 resources are more likely to experience unhealthy and unsafe housing  
8 conditions;

9 (2) Healthy homes promote good physical and mental health. When  
10 adequate housing protects individuals and families from harmful  
11 exposures and provides them with a sense of privacy, security,  
12 stability, and control, it can make important contributions to health  
13 and well-being;

14 (3) Affordable housing is a necessary component of strong,  
15 thriving neighborhoods with healthy physical and social environments;

16 (4) Very low-income household renters should have the opportunity  
17 to live in homes in neighborhoods close to major infrastructure  
18 investments like transit, quality schools for children, and vital  
19 services like health care, grocery shopping, and employment;

20 (5) Community members with critical occupations, senior citizens,  
21 and families are struggling to afford rent around the state;

1 (6) Rising rents are causing the displacement of very low-income  
2 household renters and long-time community members, risking the loss  
3 of cultural communities;

4 (7) Property owners require additional resources to make health,  
5 safety, and quality improvements to buildings without raising rents  
6 to pay for repairs; and

7 (8) Communities need a wide range of local tools to create  
8 healthy, affordable homes and address affordable housing needs.

9 NEW SECTION. **Sec. 2.** It is the purpose of this chapter to give  
10 communities a local option to preserve and increase healthy, high-  
11 quality affordable rental housing opportunities for very low-income  
12 households for which the governing authority has found that there are  
13 insufficient healthy affordable housing opportunities. It is also the  
14 purpose of this chapter to ensure that housing opportunities are  
15 affordable to renters at below-market rent levels, as determined by  
16 the governing authority, with consideration of community needs,  
17 market rental costs, and income levels of renters.

18 NEW SECTION. **Sec. 3.** The definitions in this section apply  
19 throughout this chapter unless the context clearly requires  
20 otherwise.

21 (1) "Accessory dwelling unit" means one or more rooms that are  
22 located within a single-family dwelling unit or within an accessory  
23 structure on the same lot as a single-family dwelling unit.

24 (2) "Energy and water efficiency standards" means housing that  
25 meets standards substantially equivalent to evergreen sustainable  
26 development standards, as established by the Washington state  
27 department of commerce.

28 (3) "Governing authority" means the local legislative authority  
29 of a city or county having jurisdiction over the property for which  
30 an exemption may be applied under this chapter.

31 (4) "Health and quality standards" means standards substantially  
32 equivalent to uniform physical condition standards, as established by  
33 the United States department of housing and urban development, or the  
34 national healthy housing standard, as established by the national  
35 center for healthy housing and the American public health  
36 association. Governing authority may use a residential housing  
37 inspection program within the jurisdiction that has established the  
38 tax exemption, as long as the standards are substantially equivalent

1 to uniform physical condition standards or the national healthy  
2 housing standard.

3 (5) "High-cost area" means a county where the third quarter  
4 median house price for the previous year as reported by the Runstad  
5 center for real estate studies at the University of Washington is  
6 equal to or greater than one hundred thirty percent of the statewide  
7 median house price published during the same time period.

8 (6) "Household" means a single person, family, or unrelated  
9 persons living together.

10 (7) "Multifamily dwelling" means a building consisting of more  
11 than one dwelling unit, as further defined by the governing  
12 authority.

13 (8) "Owner" means the property owner of record.

14 (9) "Permanent residential occupancy" means housing that provides  
15 rental occupancy on a nontransient basis. "Permanent residential  
16 occupancy" includes rental accommodation that is leased for a period  
17 of at least one month. "Permanent residential occupancy" excludes  
18 hotels and motels that predominately offer rental accommodation on a  
19 daily or weekly basis.

20 (10) "Property" means a multifamily dwelling not designed as  
21 transient accommodations, and the land upon which the dwelling is  
22 located. "Property" excludes hotels or motels. "Property" may also  
23 include a single-family dwelling and the land upon which the dwelling  
24 is located if the governing authority adopts a program for such  
25 property as provided in section 9(1)(e) of this act.

26 (11) "Rehabilitation improvements" means modifications to  
27 existing property made to achieve substantial compliance with energy  
28 and water efficiency standards.

29 (12) "Single-family dwelling unit" means an individual detached  
30 dwelling, as further defined by the governing authority.

31 (13) "Very low-income household" means a single person, family,  
32 or unrelated persons living together whose adjusted income is at or  
33 below fifty percent of the median family income adjusted for family  
34 size, for the county in which the project is located, as reported by  
35 the United States department of housing and urban development. For  
36 cities located in high-cost areas, "very low-income household" means  
37 a household that has an income at or below sixty percent of the  
38 median family income adjusted for family size, for the county in  
39 which the project is located.

1        NEW SECTION.    **Sec. 4.**    A city governing authority may adopt a  
2 property tax exemption program to preserve affordable housing that  
3 meets health and quality standards for very low-income households at  
4 risk of displacement or that cannot afford market-rate housing. A  
5 county governing authority may adopt a property tax exemption program  
6 for unincorporated areas of the county to preserve affordable housing  
7 that meets health and quality standards for very low-income  
8 households at risk of displacement or that cannot afford market-rate  
9 housing.

10       NEW SECTION.    **Sec. 5.**    (1) Upon adoption of a property tax  
11 exemption program, the governing authority must establish standards  
12 for very low-income household rental housing under this chapter,  
13 including rent limits and income guidelines consistent with local  
14 housing needs, to assist very low-income households that cannot  
15 afford market-rate housing. Affordable housing units must be:

16       (a) Below market rent levels as determined by the governing  
17 authority; and

18       (b) Affordable to households with an income of fifty percent or  
19 less of the county median family income, adjusted for family size.

20       (2)(a) The governing authority, after holding a public hearing,  
21 may also establish lower income levels or lower rent levels adjusted  
22 to serve very low-income household renters in the community.

23       (b) The governing authority of a high-cost area, after holding a  
24 public hearing, may also establish higher income levels. The higher  
25 income level may not exceed sixty percent of the county area median  
26 family income, adjusted for family size.

27       (3) Rent levels for affordable housing units may not exceed  
28 thirty percent of the income limit for the low-income housing unit,  
29 as established by the governing authority, and must include tenant-  
30 paid utilities other than telephone and any mandatory fees required  
31 as a condition of tenancy.

32       NEW SECTION.    **Sec. 6.**    (1) The value of residential real property  
33 qualifying under this chapter is exempt from ad valorem property  
34 taxation, except taxes levied by the state, for a period of fifteen  
35 successive years beginning January 1st of the calendar year  
36 immediately following the calendar year in which a certificate of tax  
37 exemption is filed with the county assessor in accordance with  
38 section 12 of this act.

1 (2) The governing authority may extend the duration of the  
2 exemption period by three years for properties meeting energy and  
3 water efficiency standards.

4 (3) The incentive provided under this chapter is in addition to  
5 any tax credits, grants, or other incentives provided by law.

6 (4) This chapter neither applies to increases in assessed  
7 valuation made by the assessor on nonqualifying portions of building  
8 or land nor to increases made by lawful order of a county board of  
9 equalization, the department of revenue, or a county, to a class of  
10 property throughout the county or specific area of the county to  
11 achieve the uniformity of assessment or appraisal required by law.

12 (5) The exemption does not apply to any county property tax  
13 unless the legislative authority of the county adopts a resolution  
14 and notifies the governing authority of the jurisdiction within the  
15 county that has established a tax exempt program of its intent to  
16 allow the property to be exempt.

17 (6) The governing authority must notify local taxing districts in  
18 the designated exemption area when a tax exemption program is  
19 established under this chapter.

20 NEW SECTION. **Sec. 7.** To be eligible for the exemption from  
21 property taxation under this chapter, in addition to other  
22 requirements set forth in this chapter, the property must be in  
23 compliance with the following applicable requirements for the entire  
24 exemption period:

25 (1) A minimum of twenty-five percent of units in a multiple-unit  
26 property subject to tax exemption must be affordable as described in  
27 section 5 of this act. A governing authority may require more than  
28 twenty-five percent affordable units in multiple-unit housing  
29 buildings subject to tax exemption to address local market  
30 conditions. Affordable units must be comparable in terms of quality  
31 and living conditions to market rate units in the building;

32 (2) At least ninety percent of the units of multiple-unit  
33 property must be occupied by tenants at the time of application;

34 (3) The property must be part of a residential or mixed-use  
35 (residential and nonresidential) project;

36 (4) The property must provide for a minimum of fifty percent of  
37 the space in each building for permanent residential occupancy;

38 (5) The property must meet guidelines as adopted by the governing  
39 authority that may include height, density, public benefit features,

1 number and size of proposed development, parking, income limits for  
2 occupancy, limits on rents, health and quality standards, and other  
3 adopted requirements indicated as necessary by the governing  
4 authority. The required amenities must be relative to the size of the  
5 project and tax benefit to be obtained; and

6 (6) The property owner must enter into a contract with the city  
7 or county approved by the governing authority, or an administrative  
8 official or commission authorized by the governing authority, under  
9 which the property owner has agreed to terms and conditions  
10 satisfactory to the governing authority.

11 NEW SECTION. **Sec. 8.** (1) To be eligible for the exemption from  
12 taxation under this chapter, the property must also comply with all  
13 applicable land use regulations, zoning requirements, and building  
14 and housing code requirements, including space and occupancy,  
15 structural, mechanical, fire, safety, and security standards, and  
16 health and quality standards. The governing authority may establish  
17 additional standards to meet local needs.

18 (2) The property must be inspected for compliance with subsection  
19 (1) of this section at the time of application for tax exemption and,  
20 thereafter, as established by the governing authority at least once  
21 every three years.

22 (3) The governing authority or its duly authorized representative  
23 may deny an application for tax exemption or revoke an existing  
24 exemption under this chapter for failure to comply with health and  
25 quality standards.

26 NEW SECTION. **Sec. 9.** (1) The governing authority may establish  
27 additional requirements for tax exemption eligibility or program  
28 rules under this chapter including, but not limited to:

29 (a) A limit on the total number of affordable housing units  
30 subject to exemption under this chapter;

31 (b) The designation of targeted residential areas for property to  
32 align with community needs, including to prevent displacement,  
33 preserve cultural communities, and provide affordable housing options  
34 near community infrastructure such as transportation or public  
35 schools;

36 (c) Standards for property size, unit size, unit type, mix of  
37 unit types, or mix of unit sizes;

1 (d) An exemption extension for property meeting minimum energy  
2 and water efficiency standards substantially equivalent to evergreen  
3 sustainable development building performance standards;

4 (e) A program for single-family dwelling rental units or  
5 accessory dwelling units occupied by tenants complying with  
6 affordability requirements under this chapter as adopted by the  
7 governing authority;

8 (f) Any additional requirements to reduce displacement of very  
9 low-income household tenants.

10 (2) The governing authority must adopt and implement standards  
11 and guidelines to be utilized in considering applications and making  
12 the determinations required under this chapter. The standards and  
13 guidelines must establish basic requirements to include:

14 (a) An application process and procedures;

15 (b) Guidelines that may include height, density, public benefit  
16 features, number and size of proposed development, parking, income  
17 limits for occupancy, limits on rents, health and quality standards,  
18 and other adopted requirements indicated as necessary by the  
19 governing authority. The required amenities should be relative to the  
20 size of the project and tax benefit to be obtained;

21 (c) An inspection policy and procedures to ensure the property  
22 complies with health and quality standards;

23 (d) Income and rent limits as required under section 5 of this  
24 act; and

25 (e) Documentation necessary to establish income eligibility of  
26 households in affordable housing units.

27 (3) Standards may apply to part or all of a jurisdiction and  
28 different standards may be applied to different areas within a  
29 jurisdiction or to different types of development. Programs  
30 authorized under this section may be modified to meet local needs and  
31 may include provisions not expressly provided in this section.

32 NEW SECTION. **Sec. 10.** An owner of property making an  
33 application under this chapter must apply by August 1st of the year  
34 prior to the first calendar year in which the taxes for collection  
35 are to be considered for exemption and meet the following  
36 requirements:

37 (1) The applicant must apply to the city or county on forms  
38 adopted by the governing authority. The application must contain the  
39 following:

1 (a) Information setting forth the grounds supporting the  
2 requested exemption, including information indicated on the  
3 application form or in the guidelines;

4 (b) A description of the project and site plan, including the  
5 floor plan of units and other information requested;

6 (c) A statement that the applicant is aware of the potential tax  
7 liability involved when the property ceases to be eligible for the  
8 incentive provided under this chapter;

9 (d) When the governing authority finds that rehabilitation is  
10 required to meet evergreen sustainable development building  
11 performance standards, a rehabilitation plan outlining rehabilitation  
12 improvements, budget, and proposed schedule for repairs; and

13 (e) A certification of family size and annual income in a form  
14 acceptable to the governing authority for designated affordable  
15 housing units;

16 (2) The applicant must verify the application by oath or  
17 affirmation; and

18 (3) The applicant must submit a fee, if any, with the application  
19 as required under this chapter. The governing authority may permit  
20 the applicant to revise an application before final action by the  
21 governing authority.

22 NEW SECTION. **Sec. 11.** (1) Upon receipt of an application  
23 meeting the requirements of section 10 of this act, the governing  
24 authority must inspect the property to certify compliance with health  
25 and quality standards.

26 (2) The duly authorized administrative official or committee of  
27 the governing authority may approve the application if it finds that:

28 (a) The property meets affordable housing requirements as  
29 described in section 5 of this act;

30 (b) The property meets health and quality standards; and

31 (c) The owner has complied with all standards and guidelines  
32 adopted by the governing authority under this chapter.

33 NEW SECTION. **Sec. 12.** (1) The governing authority, or an  
34 administrative official or commission authorized by the governing  
35 authority, must approve or deny an application filed under this  
36 chapter within one hundred twenty days. The governing authority may  
37 adopt standards to extend the period to approve or deny an



1 application filed under this chapter for a property that does not  
2 meet health and quality standards.

3 (2) If the application is approved, the governing authority must  
4 issue the owner of the property a certificate of tax exemption and  
5 file the certificate of exemption with the county assessor no later  
6 than December 1st of the year prior to the first calendar year in  
7 which the taxes for collection are to be exempt. If the certificate  
8 of exemption is filed after December 1st and before January 1st, the  
9 certificate of exemption is deemed filed in the next calendar year.  
10 The certificate must contain a statement by a duly authorized  
11 administrative official of the governing authority that the property  
12 has complied with the required findings indicated in this chapter.

13 (3)(a) If the application is denied by the authorized  
14 administrative official or commission authorized by the governing  
15 authority, the deciding administrative official or commission must  
16 state in writing the reasons for denial and send the notice to the  
17 applicant at the applicant's last known address within ten days of  
18 the denial.

19 (b) Upon denial by the authorized administrative official or  
20 commission, an applicant may appeal the denial to the governing  
21 authority within thirty days after receipt of the denial. The appeal  
22 before the governing authority must be based upon the record made  
23 before the administrative official or commission with the burden of  
24 proof on the applicant to show that there was no substantial evidence  
25 to support the administrative official or commission's decision. The  
26 decision of the governing body in denying or approving the  
27 application is final.

28 NEW SECTION. **Sec. 13.** The governing authority may establish an  
29 application fee or other fees to not exceed an amount determined to  
30 be required to cover the cost to be incurred by the governing  
31 authority and the assessor in administering this chapter. The  
32 application fee, if established, must be paid at the time the  
33 application is submitted. If the application is approved, the  
34 governing authority must pay the application fee to the county  
35 assessor for deposit in the county current expense fund, after first  
36 deducting that portion of the fee attributable to its own  
37 administrative costs in processing the application. If the  
38 application is denied, the governing authority may retain that

1 portion of the application fee attributable to its own administrative  
2 costs and refund the balance to the applicant.

3 NEW SECTION. **Sec. 14.** The authorized representative of the  
4 governing authority must notify the applicant that a certificate of  
5 tax exemption will be denied or canceled if the authorized  
6 representative determines that:

7 (1) The affordable housing requirements as described in section 5  
8 of this act were not met;

9 (2) The property did not meet health and quality standards; or

10 (3) The owner's property is otherwise not qualified for limited  
11 exemption under this chapter.

12 NEW SECTION. **Sec. 15.** (1) The owner of property receiving a tax  
13 exemption under this chapter must obtain from each tenant living in  
14 designated affordable housing units, no less than annually, a  
15 certification of family size and annual income in a form acceptable  
16 to the governing authority.

17 (2) The property owner must file a report at least annually by a  
18 date established by the governing authority indicating the following:

19 (a) Family size and annual income for each tenant living in  
20 designated affordable housing rental units and a statement that the  
21 property is in compliance with affordable housing requirements  
22 described in section 5 of this act;

23 (b) A statement of occupancy and vacancy;

24 (c) A schedule of rents charged in market-rate units;

25 (d) A certification that the property has not changed use;

26 (e) A description of changes or improvements;

27 (f) When rehabilitation is required to meet evergreen sustainable  
28 development building performance standards, a progress report on  
29 compliance with the rehabilitation plan, budget, and proposed  
30 schedule for repairs; and

31 (g) Any other information required to determine compliance with  
32 program requirements or to measure program performance.

33 (3) A governing authority that issues certificates of tax  
34 exemption for property that conform to the requirements of this  
35 chapter must report annually by July 1st to the department of  
36 commerce the following information:

37 (a) The number of tax exemption certificates granted;

1 (b) The number and type of units in building properties receiving  
2 a tax exemption;

3 (c) The number and type of units meeting affordable housing  
4 requirements;

5 (d) The total monthly rent amount for each affordable and market-  
6 rate unit; and

7 (e) The value of the tax exemption for each project receiving a  
8 tax exemption and the total value of tax exemptions granted.

9 NEW SECTION. **Sec. 16.** (1) After a certificate of exemption has  
10 been filed with the county assessor, the tax exemption must be  
11 canceled by the authorized representative of the governing authority  
12 under the following circumstances:

13 (a) The owner intends to convert the property to another use that  
14 is not residential or the owner intends to discontinue compliance  
15 with affordable housing requirements;

16 (b) The owner fails to file annual reports;

17 (c) The owner fails to maintain the property in substantial  
18 compliance with all applicable local building, safety, and health  
19 code requirements; or

20 (d) The owner fails to meet affordable housing requirements.

21 (2)(a) Notification of a canceled certificate of exemption must  
22 be made by the governing authority or authorized representative of  
23 the governing authority to the county assessor within thirty days of  
24 the cancellation. Upon notice of a canceled tax exemption  
25 certificate, additional real property tax must be imposed upon the  
26 value of the improvements and land that no longer qualify for  
27 exemption under this chapter in the amount that would have been  
28 imposed had the property not been exempt under this act, plus a  
29 penalty of twenty percent of the additional tax. This additional tax  
30 is calculated from January 1st of the year the certificate of tax  
31 exemption first became effective.

32 (b) Interest must be included upon the amounts of the additional  
33 tax at the same rate charged on delinquent property taxes from the  
34 dates on which the additional tax could have been paid without  
35 penalty if the property had been assessed at a value without regard  
36 to this chapter.

37 (c) The additional tax, penalty, and interest must be collected  
38 by the county treasurer. The additional tax must be distributed by  
39 the county treasurer in the same manner in which current property

1 taxes applicable to the subject property are distributed. The  
2 additional taxes, penalty, and interest must be payable in full  
3 thirty days following the date on which the treasurer's statement of  
4 additional tax due is issued.

5 (d) The additional tax owed together with the interest and  
6 penalty becomes a lien on the land and attaches at the time the  
7 property or portion of the property is removed from use as affordable  
8 housing or the amenities no longer meet applicable requirements, and  
9 has priority to and must be fully paid and satisfied before a  
10 recognizance, mortgage, judgment, debt, obligation, or responsibility  
11 to or with which the land may become charged or liable. The lien may  
12 be foreclosed upon the expiration of the same period after  
13 delinquency and in the same manner provided by law for foreclosure of  
14 liens for delinquent real property taxes. An additional tax unpaid on  
15 its due date is delinquent.

16 (e) The county auditor may not accept an instrument of conveyance  
17 unless the additional tax, interest, and penalty has been paid or the  
18 governing authority or authorized representative has determined that  
19 the property is not subject to the additional tax, interest, or  
20 penalty.

21 (f) A certificate of exemption may be continued for the remainder  
22 of the exemption period upon sale or transfer of all or a portion of  
23 the exempt property to a new owner, if the new owner has signed a  
24 notice of exemption continuance. The notice of exemption continuance  
25 must be in a form approved by the governing authority or its  
26 authorized representative. If the notice of continuance is not signed  
27 by the new owner and attached to the real estate excise tax  
28 affidavit, all additional tax, penalty, and interest calculated in  
29 accordance with this section become due and payable by the owner,  
30 including the seller or transferor, at time of sale.

31 (3) Upon a determination that a property tax exemption is to be  
32 canceled for any reason stated in this section, the governing  
33 authority or authorized representative of the governing authority  
34 must notify the record owner of the property as shown by the tax  
35 rolls by mail, return receipt requested, of the determination to  
36 cancel the exemption. The owner may appeal the determination to the  
37 governing authority or authorized representative within thirty days  
38 by filing a notice of appeal with the clerk of the governing  
39 authority, which must specify the factual and legal basis on which  
40 the determination of cancellation is alleged to be erroneous. The

1 governing authority or a hearing examiner or other official  
2 authorized by the governing authority may hear the appeal. At the  
3 hearing, all affected parties may be heard and all competent evidence  
4 received. After the hearing, the deciding body or officer must either  
5 affirm, modify, or repeal the decision of cancellation of exemption  
6 based on the evidence received. An aggrieved party may appeal the  
7 decision of the deciding body or officer to the superior court under  
8 RCW 34.05.510 through 34.05.598.

9 (4) Upon the expiration of the exemption period or upon  
10 cancellation of the exemption, the cost of new construction and  
11 improvements to the property, not previously considered as new  
12 construction during the exemption period, must be considered as new  
13 construction for purposes of calculating levies under chapter 84.55  
14 RCW.

15 NEW SECTION. **Sec. 17.** Tenant identifying information and income  
16 data obtained by the governing authority and the assessor may be used  
17 only to administer this affordable housing exemption. Notwithstanding  
18 any provision of law to the contrary, absent written consent by the  
19 person about whom the information or facts have been obtained, the  
20 tenant identifying information and income data may not be disclosed  
21 by the jurisdiction or assessor or their agents or employees to  
22 anyone other than their agents or employees except in an  
23 administrative or judicial proceeding pertaining to the taxpayer's  
24 entitlement to the tax exemption.

25 NEW SECTION. **Sec. 18.** The exemption in this chapter applies to  
26 taxes levied for collection in 2019 and thereafter.

27 NEW SECTION. **Sec. 19.** Sections 1 through 18 of this act  
28 constitute a new chapter in Title 84 RCW.

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