

E2SSB 5755 - H COMM AMD  
By Committee on Finance

ADOPTED 03/09/2022

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) Many cities in Washington are actively planning for growth  
5 under the growth management act, chapter 36.70A RCW;

6 (2) The construction industry provides living wage jobs for  
7 families across Washington;

8 (3) In the current economic climate, the creation of additional  
9 affordable housing units is essential to the economic health of our  
10 cities and our state;

11 (4) It is critical that Washington state promote its cities and  
12 its property owners that will provide affordable housing;

13 (5) A meaningful, fair, and predictable economic incentive should  
14 be created to stimulate the redevelopment of underdeveloped property  
15 in targeted urban areas through a limited sales and use tax deferral  
16 program as provided by this chapter;

17 (6) This limited tax deferral will help the owners of  
18 underdeveloped property achieve the highest and best use of land and  
19 enable cities to more fully realize their planning goals; and

20 (7) Data regarding the number of additional affordable units  
21 created due to the limited tax deferral will be evaluated to  
22 determine if this tool could be used to increase affordable housing  
23 in other areas of the state.

24 NEW SECTION. **Sec. 2.** It is the purpose of this chapter to  
25 encourage the redevelopment of underdeveloped land in targeted urban  
26 areas, thereby increasing affordable housing, employment  
27 opportunities, and helping accomplish the other planning goals of  
28 Washington cities. The legislative authorities of cities to which  
29 this chapter applies may authorize a sales and use tax deferral for  
30 an investment project within the city if the legislative authority of  
31 the city finds that there are significant areas of underdeveloped

1 land and a lack of affordable housing in areas proximate to the land.  
2 If a conditional recipient maintains the property for qualifying  
3 purposes for at least 10 years, deferred sales and use taxes need not  
4 be repaid.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Affordable homeownership housing" means housing intended for  
9 owner occupancy to low or moderate-income households whose monthly  
10 housing costs, including utilities other than telephone, do not  
11 exceed 30 percent of the household's monthly income.

12 (2) "Affordable rental housing" means housing for very low or  
13 low-income households whose monthly housing costs, including  
14 utilities other than telephone, do not exceed 30 percent of the  
15 household's monthly income.

16 (3) "Applicant" means an owner of underdeveloped property.

17 (4) "City" means a city with a population of at least 135,000 and  
18 not more than 250,000 at the time the city initially establishes the  
19 program under this section.

20 (5) "Conditional recipient" means an owner of underdeveloped land  
21 granted a conditional certificate of program approval under this  
22 chapter, which includes any successor owner of the property.

23 (6) "County median price" means the most recently published  
24 quarterly data of median home prices by the Washington center for  
25 real estate research.

26 (7) "Eligible investment project" means an investment project  
27 that is located in a city and receiving a conditional certificate of  
28 program approval.

29 (8) "Fair market rent" means the estimates of 40th percentile  
30 gross rents for standard quality units within counties as published  
31 by the federal department of housing and urban development.

32 (9) "Governing authority" means the local legislative authority  
33 of a city having jurisdiction over the property for which a deferral  
34 may be granted under this chapter.

35 (10) "Household" means a single person, family, or unrelated  
36 persons living together.

37 (11)(a) "Initiation of construction" means the date that a  
38 building permit is issued under the building code adopted under RCW  
39 19.27.031 for construction of the qualified building, if the

1 underlying ownership of the building vests exclusively with the  
2 person receiving the economic benefit of the deferral.

3 (b) "Initiation of construction" does not include soil testing,  
4 site clearing and grading, site preparation, or any other related  
5 activities that are initiated before the issuance of a building  
6 permit for the construction of the foundation of the building.

7 (c) If the investment project is a phased project, "initiation of  
8 construction" applies separately to each phase.

9 (12) "Investment project" means an investment in multifamily  
10 housing, including labor, services, and materials incorporated in the  
11 planning, installation, and construction of the project. "Investment  
12 project" includes investment in related facilities such as  
13 playgrounds and sidewalks as well as facilities used for business use  
14 for mixed-use development.

15 (13) "Low-income household" means a single person, family, or  
16 unrelated persons living together whose adjusted income is more than  
17 50 percent but is at or below 80 percent of the median family income  
18 adjusted for family size, for the county, city, or metropolitan  
19 statistical area, where the project is located, as reported by the  
20 United States department of housing and urban development.

21 (14) "Moderate-income household" means a single person, family,  
22 or unrelated persons living together whose adjusted income is more  
23 than 80 percent but is at or below 115 percent of the median family  
24 income adjusted for family size, for the county, city, or  
25 metropolitan statistical area, where the project is located, as  
26 reported by the United States department of housing and urban  
27 development.

28 (15) "Multifamily housing" means a building or a group of  
29 buildings having two or more dwelling units not designed or used as  
30 transient accommodations and not including hotels and motels.  
31 Multifamily units may result from new construction or rehabilitation  
32 or conversion of vacant, underutilized, or substandard buildings to  
33 multifamily housing.

34 (16) "Owner" means the property owner of record.

35 (17) "Underdeveloped property" means land used as a surface  
36 parking lot for parking of motor vehicles off the street or highway,  
37 that is open to public use with or without charge, as of the  
38 effective date of this section.

39 (18) "Very low-income household" means a single person, family,  
40 or unrelated persons living together whose adjusted income is at or

1 below 50 percent of the median family income adjusted for family  
2 size, for the county, city, or metropolitan statistical area, where  
3 the project is located, as reported by the United States department  
4 of housing and urban development.

5 NEW SECTION. **Sec. 4.** (1) For the purpose of creating a sales  
6 and use tax deferral program under this chapter, the governing  
7 authority must adopt a resolution of intention to create a sales and  
8 use tax deferral program as generally described in the resolution.  
9 The resolution must state the time and place of a hearing to be held  
10 by the governing authority to consider the creation of the tax  
11 deferral program and may include such other information pertaining to  
12 the creation of the deferral program as the governing authority  
13 determines to be appropriate to apprise the public of the action  
14 intended. However, the resolution must provide information pertaining  
15 to:

- 16 (a) The application process;
- 17 (b) The approval process;
- 18 (c) The appeals process for applications denied approval; and
- 19 (d) Additional requirements, conditions, and obligations that  
20 must be followed postapproval of an application.

21 (2) The governing authority must give notice of a hearing held  
22 under this chapter by publication of the notice once each week for  
23 two consecutive weeks, not less than seven days, nor more than 30  
24 days before the date of the hearing in a paper having a general  
25 circulation in the city. The notice must state the time, date, place,  
26 and purpose of the hearing.

27 (3) Following the hearing or a continuance of the hearing, the  
28 governing authority may authorize the creation of the program.

29 NEW SECTION. **Sec. 5.** An owner of underdeveloped property  
30 seeking a sales and use tax deferral under this chapter on an  
31 investment project must complete the following procedures:

32 (1) The owner must apply to the city on forms adopted by the  
33 governing authority. The application must contain the following:

34 (a) Information setting forth the grounds supporting the  
35 requested deferral including information indicated on the application  
36 form or in the guidelines;

37 (b) A description of the investment project and site plan, and  
38 other information requested;

1 (c) A statement of the expected number of affordable housing  
2 units to be created;

3 (d) A statement that the applicant is aware of the potential tax  
4 liability involved if the investment project ceases to be used for  
5 eligible uses under this chapter;

6 (e) A statement that the applicant is aware that the investment  
7 project must be completed within three years from the date of  
8 approval of the application;

9 (f) A statement that the applicant is aware that the governing  
10 authority or the city official authorized by the governing authority  
11 may extend the deadline for completion of construction or  
12 rehabilitation for a period not to exceed 24 consecutive months; and

13 (g) A statement that the applicant would not have built in this  
14 location but for the availability of the tax deferral under this  
15 chapter;

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

18 (3) The application must be accompanied by the application fee,  
19 if any, required under this chapter. The duly authorized  
20 administrative official or committee of the city may permit the  
21 applicant to revise an application before final action by the duly  
22 authorized administrative official or committee of the city.

23 NEW SECTION. **Sec. 6.** The duly authorized administrative  
24 official or committee of the city may approve the application and  
25 grant a conditional certificate of program approval if it finds that:

26 (1)(a) The investment project is set aside primarily for  
27 multifamily housing units and the applicant commits to renting or  
28 selling at least 50 percent of the units as affordable rental housing  
29 or affordable homeownership housing to very low, low, and moderate-  
30 income households. In a mixed use project, only the ground floor of a  
31 building may be used for commercial purposes with the remainder  
32 dedicated to multifamily housing units;

33 (b) At least 50 percent of the investment project set aside for  
34 multifamily housing units will be rented at a price at or below fair  
35 market rent for the county or sold at a price at or below county  
36 median price; and

37 (c) The applicant commits to any additional affordability and  
38 income eligibility conditions adopted by the local government under  
39 this chapter not otherwise inconsistent with this chapter;

1 (2) The investment project is, or will be, at the time of  
2 completion, in conformance with all local plans and regulations that  
3 apply at the time the application is approved;

4 (3) The investment project will occur on land that constitutes  
5 underdeveloped property;

6 (4) The area where the investment project will occur is located  
7 within an area zoned for residential or mixed uses;

8 (5) The terms and conditions of the implementation of the  
9 development meets the requirements of this chapter and any  
10 requirements of the city that are not otherwise inconsistent with  
11 this chapter;

12 (6) The land where the investment project will occur was not  
13 acquired through a condemnation proceeding under Title 8 RCW; and

14 (7) All other requirements of this chapter have been satisfied as  
15 well as any other requirements of the city that are not otherwise  
16 inconsistent with this chapter.

17 NEW SECTION. **Sec. 7.** (1) The duly authorized administrative  
18 official or committee of the city must approve or deny an application  
19 filed under this chapter within 90 days after receipt of the  
20 application.

21 (2) If the application is approved, the city must issue the  
22 applicant a conditional certificate of program approval. The  
23 certificate must contain a statement by a duly authorized  
24 administrative official of the governing authority that the  
25 investment project as described in the application will comply with  
26 the required criteria of this chapter.

27 (3) If the application is denied by the city, the city must state  
28 in writing the reasons for denial and send the notice to the  
29 applicant at the applicant's last known address within 10 days of the  
30 denial.

31 (4) Upon denial by the city, an applicant may appeal the denial  
32 to the city's governing authority or a city official designated by  
33 the city to hear such appeals within 30 days after receipt of the  
34 denial. The appeal before the city's governing authority or  
35 designated city official must be based upon the record made before  
36 the city with the burden of proof on the applicant to show that there  
37 was no substantial evidence to support the city's decision. The  
38 decision of the city on the appeal is final.

1        NEW SECTION.    **Sec. 8.**    The governing authority may establish an  
2 application fee. This fee may not exceed an amount determined to be  
3 required to cover the cost to be incurred by the governing authority  
4 in administering the program under this chapter. The application fee  
5 must be paid at the time the application for program approval is  
6 filed.

7        NEW SECTION.    **Sec. 9.**    (1) Within 30 days of the issuance of a  
8 certificate of occupancy for an eligible investment project, the  
9 conditional recipient must file with the city the following:

10        (a) A description of the work that has been completed and a  
11 statement that the eligible investment project qualifies the property  
12 for a sales and use tax deferral under this chapter;

13        (b) A statement of the new affordable housing to be offered as a  
14 result of the new construction; and

15        (c) A statement that the work has been completed within three  
16 years of the issuance of the conditional certificate of program  
17 approval.

18        (2) Within 30 days after receipt of the statements required under  
19 subsection (1) of this section, the city must determine and notify  
20 the conditional recipient as to whether the work completed and the  
21 affordable housing to be offered are consistent with the application  
22 and the contract approved by the city, and the investment project  
23 continues to qualify for a tax deferral under this chapter. The  
24 conditional recipient must notify the department within 30 days from  
25 receiving the city's determination to schedule an audit of the  
26 deferred taxes. The department must determine the amount of sales and  
27 use taxes qualifying for the deferral. If the department determines  
28 that purchases were not eligible for deferral it must assess  
29 interest, but not penalties, on the nonqualifying amounts.

30        (3) The city must notify the conditional recipient within 30 days  
31 that a tax deferral under this chapter is denied if the city  
32 determines that:

33        (a) The work was not completed within three years of the  
34 application date;

35        (b) The work was not constructed consistent with the application  
36 or other applicable requirements;

37        (c) The affordable housing units to be offered are not consistent  
38 with the application and criteria of this chapter; or

1 (d) The owner's property is otherwise not qualified for a sales  
2 and use tax deferral under this chapter.

3 (4) If the city finds that the work was not completed within the  
4 required time period due to circumstances beyond the control of the  
5 conditional recipient and that the conditional recipient has been  
6 acting and could reasonably be expected to act in good faith and with  
7 due diligence, the governing authority may extend the deadline for  
8 completion of the work for a period not to exceed 24 consecutive  
9 months.

10 (5) The city's governing authority may enact an ordinance to  
11 provide a process for a conditional recipient to appeal a decision by  
12 the city that the conditional recipient is not entitled to a deferral  
13 of sales and use taxes. The conditional recipient may appeal a  
14 decision by the city to deny a deferral of sales and use taxes in  
15 superior court under RCW 34.05.510 through 34.05.598, if the appeal  
16 is filed within 30 days of notification by the city to the  
17 conditional recipient.

18 (6) A city denying a conditional recipient of a sales and use tax  
19 deferral under subsection (3) of this section must notify the  
20 department and taxes deferred under this chapter are immediately due  
21 and payable, subject to any appeal by the conditional recipient. The  
22 department must assess interest at the rate provided for delinquent  
23 taxes and penalties retroactively to the date of deferral. A debt for  
24 deferred taxes will not be extinguished by insolvency or other  
25 failure of the recipient.

26 NEW SECTION. **Sec. 10.** (1) Thirty days after the anniversary of  
27 the date of issuance of the certificate of occupancy and each year  
28 thereafter for 10 years, the conditional recipient must file with a  
29 designated authorized representative of the city an annual report  
30 indicating the following:

31 (a) A statement of the affordable housing units constructed on  
32 the property as of the anniversary date;

33 (b) A certification by the conditional recipient that the  
34 property has not changed use;

35 (c) A description of changes or improvements constructed after  
36 issuance of the certificate of occupancy; and

37 (d) Any additional information requested by the city.

38 (2) The conditional recipient of a deferral of taxes under this  
39 chapter must file a complete annual tax performance report with the



1 department pursuant to RCW 82.32.534 beginning the year the  
2 certificate of occupancy is issued and each year thereafter for 10  
3 years.

4 (3) A city that issues a certificate of program approval under  
5 this chapter must report annually by December 31st of each year,  
6 beginning in 2022, to the department of commerce. The report must  
7 include the following information:

8 (a) The number of program approval certificates granted;

9 (b) The total number and type of new buildings constructed;

10 (c) The number of affordable housing units resulting from the new  
11 construction; and

12 (d) The estimated value of the sales and use tax deferral for  
13 each investment project receiving a program approval and the total  
14 estimated value of sales and use tax deferrals granted.

15 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit  
16 an application to the department before initiation of the  
17 construction of the investment project. In the case of an investment  
18 project involving multiple qualified buildings, applications must be  
19 made for, and before the initiation of construction of, each  
20 qualified building. The application must be made to the department in  
21 a form and manner prescribed by the department. The application must  
22 include a copy of the conditional certificate of program approval  
23 issued by the city, estimated construction costs, time schedules for  
24 completion and operation, and any other information required by the  
25 department. The department must rule on the application within 60  
26 days.

27 (2) The department must provide information to the conditional  
28 recipient regarding documentation that must be retained by the  
29 conditional recipient in order to substantiate the amount of sales  
30 and use tax actually deferred under this chapter.

31 (3) The department may not accept applications for the deferral  
32 under this chapter after June 30, 2032.

33 (4) The application must include a waiver by the conditional  
34 recipient of the four-year limitation under RCW 82.32.100.

35 (5) This section expires July 1, 2032.

36 NEW SECTION. **Sec. 12.** (1) After receiving the conditional  
37 certificate of program approval issued by the city and provided to  
38 the department by the applicant, the department must issue a sales

1 and use tax deferral certificate for state and local sales and use  
2 taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible  
3 investment project.

4 (2) The department must keep a running total of all estimated  
5 sales and use tax deferrals provided under this chapter during each  
6 fiscal biennium.

7 (3) The deferral certificate is valid during active construction  
8 of a qualified investment project and expires on the day the city  
9 issues a certificate of occupancy for the investment project for  
10 which a deferral certificate was issued.

11 (4) This section expires July 1, 2032.

12 NEW SECTION. **Sec. 13.** (1) If a conditional recipient  
13 voluntarily opts to discontinue compliance with the requirements of  
14 this chapter, the recipient must notify the city and department  
15 within 60 days of the change in use or intended discontinuance.

16 (2) If, after the department has issued a sales and use tax  
17 deferral certificate and the conditional recipient has received a  
18 certificate of occupancy, the city finds that a portion of an  
19 investment project is changed or will be changed to disqualify the  
20 recipient for sales and use tax deferral eligibility under this  
21 chapter, the city must notify the department and all deferred sales  
22 and use taxes are immediately due and payable. The department must  
23 assess interest at the rate provided for delinquent taxes and  
24 penalties retroactively to the date of deferral. A debt for deferred  
25 taxes will not be extinguished by insolvency or other failure of the  
26 recipient.

27 (3) This section does not apply after 10 years from the date of  
28 the certificate of occupancy.

29 NEW SECTION. **Sec. 14.** (1) Transfer of investment project  
30 ownership does not terminate the deferral. The deferral is  
31 transferred subject to the successor meeting the eligibility  
32 requirements of this chapter.

33 (2) The transferor of an eligible project must notify the city  
34 and the department of such transfer. The city must certify to the  
35 department that the successor meets the requirements of the deferral.  
36 The transferor must provide the information necessary for the  
37 department to transfer the deferral. If the transferor fails to  
38 notify the city and the department, all deferred sales and use taxes

1 are immediately due and payable. The department must assess interest  
2 at the rate provided for delinquent taxes and penalties retroactively  
3 to the date of deferral.

4 NEW SECTION. **Sec. 15.** (1) This section is the tax preference  
5 performance statement for the tax preference contained in  
6 chapter . . . , Laws of 2022 (this act). This performance statement is  
7 only intended to be used for subsequent evaluation of the tax  
8 preference. It is not intended to create a private right of action by  
9 any party or to be used to determine eligibility for preferential tax  
10 treatment.

11 (2) The legislature categorizes this tax preference as one  
12 intended to induce certain designated behavior by taxpayers, as  
13 indicated in RCW 82.32.808(2) (a).

14 (3) It is the legislature's specific public policy objective to  
15 expand affordable housing options for very low to moderate-income  
16 households, specifically in underdeveloped urban areas.

17 (4) (a) To measure the effectiveness of the tax preference in this  
18 act, the joint legislative audit and review committee must evaluate  
19 the number of increased housing units on underdeveloped property. If  
20 a review finds that the number of affordable housing units has not  
21 increased, then the legislature intends to repeal this tax  
22 preference.

23 (b) The review must be provided to the fiscal committees of the  
24 legislature by December 31, 2030.

25 (5) In order to obtain the data necessary to perform the review  
26 in subsection (4) of this section, the joint legislative audit and  
27 review committee may refer to any available data source, including  
28 data collected by the department under section 10 of this act.

29 NEW SECTION. **Sec. 16.** Sections 1 through 14 of this act  
30 constitute a new chapter in Title 82 RCW.

31 NEW SECTION. **Sec. 17.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected."

35 Correct the title.

EFFECT: Defines parking lot as a space used for parking of motor vehicles off the street or highway, that is open to public use with or without charge. Adds a requirement for recipients of a deferral of taxes to file an annual tax performance report with DOR beginning the year of project completion and every year thereafter for 10 years. Adds a tax preference performance statement.

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