

HOUSE BILL REPORT

E2SSB 5287

As Passed House - Amended:

April 10, 2021

Title: An act relating to affordable housing incentives.

Brief Description: Concerning affordable housing incentives.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Das, Kuderer, Conway, Keiser, Liias, Nguyen, Nobles, Pedersen, Randall, Salomon and Wilson, C.).

Brief History:

Committee Activity:

Finance: 3/16/21, 3/31/21 [DPA].

Floor Activity:

Passed House: 4/10/21, 81-16.

Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Authorizes a 12-year extension of existing eight-year and 12-year Multi-Family Property Tax Exemptions (MFTEs) that are set to expire if they meet certain affordability requirements.
- Establishes a new 20-year property tax exemption for properties in certain cities that commit to renting at least 20 percent of units as affordable to low-income households for at least 99 years, if certain transit requirements are met.
- Establishes a new 20-year property tax exemption for the creation of permanently affordable homes.
- Authorizes any city not otherwise eligible for the MFTE program to offer the 12-year exemption until December 31, 2026.
- Authorizes any city not otherwise eligible for the MFTE program to

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offer the 20-year exemption for permanently affordable homes until December 31, 2031.

- Directs the Department of Commerce to establish an audit and review program to verify property owner or operator compliance with certain requirements of the program.
- Makes several administrative modifications to the MFTE program, including changes to reporting requirements.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 12 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Harris-Talley, Morgan, Orwall, Ramel, Stokesbary, Thai, Vick and Wylie.

Minority Report: Do not pass. Signed by 3 members: Representatives Dufault, Assistant Ranking Minority Member; Chopp and Springer.

Minority Report: Without recommendation. Signed by 1 member: Representative Chase.

Staff: Nick Tucker (786-7383).

Background:

Property Tax.

All property is subject to a tax each year based on the highest and best use, unless a specific exemption is provided by law. The county assessor determines assessed value for each property and calculates property taxes. The property tax bill for an individual property is determined by multiplying the assessed value of the property by the tax rate for each taxing district in which the property is located. The aggregate of all regular tax levies upon real and personal property by the state and all taxing districts may not exceed 1 percent of the true and fair value of the property. In addition, the aggregate regular levies of junior taxing districts and senior taxing districts, other than the state, may not exceed \$5.90 per \$1,000 of assessed valuation.

Multifamily Property Tax Exemption.

The Multifamily Property Tax Exemption (MFTE) (also referred to as the multi-unit urban housing property tax exemption) exempts real property associated with the construction, conversion, or rehabilitation of qualified, multi-unit residential structures located in residential targeted areas (RTAs) contained within an urban center. The tax exemption applies only to the value of the construction, conversion, or rehabilitation projects and does not exempt the value of the underlying property or other improvements on the property.

The tax exemption on qualifying property lasts for eight consecutive years. However, the exemption is extended to a 12-year period if the owner commits to renting or selling at least 20 percent of multifamily housing units as affordable housing to low- and moderate-income (LMI) households.

To qualify for an exemption, the housing project must be located within an RTA designated by a qualifying county or city. The RTA must be in an urban center that lacks sufficient residential housing, including affordable housing, to meet the needs of the public who would likely live in the urban center if housing were available.

Cities with a population of 15,000 or more may designate an RTA. Certain smaller cities are also eligible. Counties with an unincorporated population over 350,000 are eligible to designate an RTA. The county-designated RTA must be in an unincorporated area of the county that is within an urban growth area under the Growth Management Act.

Property owners within a designated RTA must submit an application for the tax exemption to the designating city or county. The city or county may include additional eligibility requirements for the tax exemption, including a higher percentage of units used for affordable housing to qualify for the 12-year exemption. Counties eligible to apply the tax exemption must require owners to commit to selling or renting at least 20 percent of the multifamily housing units for affordable housing in order to qualify for either the eight or 12-year exemption.

For properties receiving a 12-year exemption where that exemption is set to expire after June 11, 2020, but prior to December 31, 2021, the exemption is extended until December 31, 2021. Any eligibility criteria or limitations that apply to the underlying exemption also apply to the extension.

For the purpose of the MFTE, affordable housing is housing for LMI households that does not exceed one-third of the household's monthly income. Low-income households must have an income that is no more than 80 percent of the median income of their county. Moderate-income households must have an income between 80 and 115 percent of the median income of their county. A county where the median house price is 130 percent of the statewide median house price is considered to be a high-cost area. For high-cost areas, low-income households must have an income that is no more than 100 percent of the median income of their county and moderate-income households must have an income between 100 and 150 percent of the median income of their county.

Tax Preferences.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance

Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Amended Bill:

Until December 31, 2031, the definition of "city" is modified to include any city. Until December 31, 2026, a city not otherwise eligible to offer the MFTE program may offer the 12-year MFTE to qualifying properties in areas zoned for average density of 15 dwelling units per acre, or for cities with a population over 20,000, a minimum density equivalent of 25 dwelling units or more per acre. In addition, counties with an unincorporated population over 170,000 are eligible to designate an RTA for purposes of the MFTE program.

Until July 15, 2024, a residential targeted area designated by a non-rural county must be in a county seeking to promote transit supportive densities and efficient land use and be in an area that is located in an urban growth area and within one-quarter of a mile of certain bus service.

A county must conduct an evaluation of the risk of potential displacement prior to designating any new residential targeted area. The analysis must find that the risk of displacement is minimal, or the county must mitigate the risk.

The definition of multiple-unit housing is modified to include a group of buildings with four or more dwelling units. For purposes of calculating median family income, city and metropolitan statistical area family median income may be used in addition to county family median income.

High-cost areas and the associated low-income household and moderate-income household median family income thresholds for high-cost areas are removed from the MFTE program.

A property that qualified for and used an eight-year or 12-year exemption and is within 18 months of expiration may apply to extend the exemption for an additional 12 years if they meet minimum locally adopted requirements for affordability. To qualify, an applicant must be approved by the city or county and commit to rent or sell at least 20 percent of the housing units to low-income households. For extensions of projects intended exclusively for owner occupancy, the affordability requirements provided in RCW 84.14.020 may be met with affordability for low-income or moderate-income households.

A city with a mandatory inclusionary zoning requirement for affordable housing which ensures affordability of housing units for a period of at least 99 years and which has a population of no more than 65,000 may offer a 20-year tax exemption program for properties that commit to renting at least 20 percent of units as affordable to low-income households for at least 99 years, if the property is within one mile of high-capacity transit of

at least 15 minute scheduled frequency.

An MFTE applicant must provide notice to tenants of rent-restricted units at the end of both the tenth and eleventh years of the exemption period. An MFTE applicant must provide tenant relocation assistance to a qualified tenant in an amount equal to one month's rent at the time the exemption expires. To be eligible for tenant relocation assistance, the tenant must occupy an income-restricted unit and qualify as a low-income household. If affordability requirements consistent with the requirements of the program remain in place after the expiration of the exemption, relocation assistance must be provided at the time that any such additional affordability requirements cease to apply.

A governing authority may adopt requirements that applicants pay prevailing wages, follow certain payroll requirements, use apprenticeship requirements, or include a contracting inclusion plan developed in consultation with the Office of Minority and Women's Business Enterprises. A governing authority may adopt additional requirements, as a contractual prerequisite or otherwise.

An owner of rehabilitated or newly constructed property must file additional information with the city or county including unit size, annual income, and household size. All cities and counties that issue certificates of tax exemption must report annually by April 1 of each year. For properties receiving an exemption under the permanently affordable homeownership exemption program, any required reporting must be completed by the qualified nonprofit or local government that will assure permanent affordable homeownership. A city or county must be in compliance with reporting requirements to offer certificates of tax exemption under the MFTE program. The Department of Commerce is to provide guidance to cities and counties on best practices in managing and reporting for the exemption programs, including guidance for collecting and reporting demographic information. Reporting requirements expire January 1, 2058.

The Department of Commerce must establish a program to audit or review that the owner or operator of each property receiving a tax exemption under the MFTE program is offering the number of units at rents as committed to in the approved application and that tenants are being properly screened to be qualified for income-restricted units. The program may be based on auditing a percentage of properties or units annually, provided that each property must be audited at least once every five years. A fee may be imposed and collected to cover the costs of the audit or review. If a property is found to be out of compliance with program requirements, the Department of Commerce must notify the city or county and the city or county must impose a sliding scale penalty not to exceed an amount calculated by subtracting the amount of rents that would have been collected had the owner or operator complied with their commitments from the amount of rents that the owner or operator actually collected. A finding of continued noncompliance in a subsequent audit must result in cancellation of the exemption. Properties owned or operated by a nonprofit and properties receiving an exemption from a city or county that operates an independent audit or review program are not subject to the audit or review program administered by the

Department of Commerce.

At the conclusion of the exemption period, the value of the new housing, construction, conversion, or rehabilitation improvements must be considered as new construction for property tax purposes as though the property was not exempt under the MFTE program. No new MFTE applications may be approved on or after January 1, 2032, or any extensions of existing tax exemptions on or after January 1, 2046.

A new 20-year tax exemption is created for properties that sell or rent 25 percent of the units to nonprofit organizations or local government partners that assure permanently affordable homeownership. Permanently affordable homeownership units must be sold to households earning no more than 80 percent of the average median income for the city or local jurisdiction in which the unit is located. A local jurisdiction may assign and collect an administration fee at each point of sale to cover the administrative costs for oversight of the permanently affordable homeownership program. Permanently affordable homeownership is homeownership sponsored by a nonprofit organization or local government that restricts resale to low- and moderate-income buyers and executes at least a 99-year ground lease or deed restriction with each sale. The Department of Commerce must develop a template for deed restrictions that can be used by local governments. No new MFTE applications for the permanently affordable homeownership program may be approved on or after January 1, 2032.

Until December 31, 2031, a city not otherwise qualified to offer the 20 year permanently affordable homeownership exemption may offer the 20-year MFTE to qualifying properties in areas zoned for average density of 15 dwelling units per acre, or for cities with a population over 20,000, a minimum density equivalent of 25 dwelling units or more per acre.

The Department of Commerce must provide an annual report to the appropriate committees of the Legislature and JLARC on city and county compliance with MFTE reporting requirements.

For preliminary or final applications submitted on or before February 15, 2020, with any outstanding application requirements, such as obtaining a temporary certificate of occupancy, the city or county may choose to extend the deadline for completion for an additional five years. The five-year extension begins immediately following the completion of any outstanding applications or previously authorized extensions, whichever is later.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was drafted during the interim with significant input from stakeholders and has had bipartisan support. The current bill has been agreed to by the various stakeholders. Communities across the state have been hit hard by the pandemic, particularly in terms of housing. Many people in the state are struggling to keep a roof over their heads. Without some sort of intervention, the supply of affordable housing will not be adequate to meet demand. This program is critical to the business model of many developers, including those developers building affordable and transit-oriented housing. The current program has created thousands of affordable housing units. This bill provides adequate local flexibility, which is an important characteristic of the tool.

The expansion of the program to new cities and counties and the extension of certain existing exemptions will allow the existing affordable housing stock to be maintained and for new units to be built. The underlying exemption program and this expansion are both an important tool to provide affordable housing for middle-income households who often do not qualify for other assistance programs. This is the segment of the low-income spectrum that is not adequately served.

The expansion of the program to permanently affordable homeownership will be particularly beneficial for those who will qualify for these housing units. Additionally, this will be an important tool to support the mission of providing affordable homeownership. This bill expands the number of people who will be able to access affordable housing.

(Opposed) None.

(Other) There was an agreed upon amendment in the Senate regarding the requirements for tenant relocation assistance that was not drafted to accurately reflect the agreement reached by stakeholders. The bill does not fully address all of the concerns of stakeholders, but it does reflect what is likely the most compromise possible. There are many good things about the bill, including the new permanently affordable homeownership program, the expansion to new cities and counties, and the extension of existing exemptions.

Persons Testifying: (In support) Senator Das, prime sponsor; Seth Dallob, NexGen Housing Partners; Ryan Donohue, Habitat for Humanity Seattle-King County; Adan Espino, Jr., Habitat for Humanity of Washington State; Brandon Morgan, Vulcan; McKenzie Darr, The Wolff Company; Greg Hanon, NAIOP; Paul Jewell, Washington State Association of Counties; Nathan Daum, City of Shoreline; and Carl Schroeder, Association of Washington Cities.

(Other) Michele Thomas, Washington Low Income Housing Alliance.

Persons Signed In To Testify But Not Testifying: None.