HOUSE BILL REPORT
E2SSB 5755

As Reported by House Committee On:
Finance

Title: An act relating to authorizing certain cities to establish a limited sales and use tax incentive program to encourage redevelopment of underdeveloped lands in urban areas.

Brief Description: Authorizing certain cities to establish a limited sales and use tax incentive program to encourage redevelopment of underdeveloped lands in urban areas.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Trudeau, Billig, Nobles, Saldaña and Wellman).

Brief History:
Committee Activity:
Finance: 3/7/22, 3/8/22 [DPA].

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

- Authorizes certain cities to establish a sales and use tax deferral program for investment projects dedicated to affordable housing in underdeveloped areas that lack affordable housing.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 11 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Thai and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Stokesbary, Vick and Young.

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Rachelle Harris (786-7137).

Background:

Retail Sales and Use Tax.
Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 4.0 percent, depending on the location.

Tax Preference Performance Statement.
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 (TPPS) 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:

The legislative authority of a qualifying city may authorize a sales and use tax deferral for an investment project within the city if the city finds there are both significant areas of underdeveloped land and a lack of affordable housing. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid.

A qualifying city includes a city with a population of at least 135,000 and not more than 250,000.

Affordable housing means rental or owner-occupied housing for very low- to moderate-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

Very low-income households are households whose adjusted income is at or below 50 percent of local median family income adjusted for family size. Low-income households are households whose adjusted income is more than 50 percent but at or below 80 percent of local median family income adjusted for family size. Moderate-income households are households whose adjusted income is between 80 percent and 115 percent of local median family income adjusted for family size.

Underdeveloped property is defined as land used as a surface parking lot for parking of motor vehicles off the street or highway, that is open to public use without charge, as of the effective date of the legislation.

<u>Establishment of Deferral Program</u>.
The governing authority within a city must adopt a resolution of intention to create a sales and use tax deferral program and hold a public hearing. The resolution must provide information related to the application and approval process, the appeals process for applications that are denied approval, as well as any additional requirements or conditions that the authority requires an approved application to follow. The governing authority may establish an application fee not to exceed the amount required to cover cost incurred to administer the deferral program.

<u>Owners seeking deferral approval</u>.
An owner of underdeveloped property seeking a sales and use tax deferral for an investment project must apply to the city. An application must include a description of the investment project and site plan, including a statement of the expected number of affordable housing units to be created, a statement verifying their awareness of potential tax liability if the investment project ceases to be used for eligible purposes, a statement that they are aware the investment project must be completed within three years from the date of application approval, a statement that they are aware that the governing authority may extend the completion of construction for another period of not more than 24 consecutive months, and a statement that the project would not have been completed in this location but for the availability of the tax deferral.

<u>Approval or Denial of Application</u>.
The city may approve an application if it finds that:
- the project is set aside primarily for multifamily housing units;
- the applicant commits to renting or selling at least 50 percent of the units as affordable rental housing or affordable homeownership housing to very low-, low-, or moderate-income households;
- for a mixed-use project, that only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units;
- at least 50 percent of the investment project set aside for multifamily housing units must be rented at a price at or below fair market rent for the county or sold at a price at or below county median price; and
- the applicant commits to any additional affordability and income eligibility conditions adopted by the local government.

An investment project must conform to all local plans and regulations that apply at the time the application is approved, and the project must occur on underdeveloped property.

A city must approve or deny an application within 90 days after receipt of the application. If the application is approved, the city must issue the applicant a conditional certificate of program approval.

If the application is denied by the city, the city must state in writing the reasons for denial and send the notice to the applicant's last known address within 10 days of the denial. An applicant may appeal the denial to the city's governing authority within 30 days after receipt of the denial.

<u>Approved Applications</u>.
A conditionally approved participant must submit an application to the Department of Revenue (DOR) before initiation of the construction of the investment project. The application must include a copy of the conditional certificate of program approval issued by the city, estimated construction costs, time schedules for completion and operation, and any other information required by the DOR. The DOR must rule on the application within 60 days.

The DOR must issue a sales and use deferral certificate for each approved eligible investment project. The deferral certificate is valid during active construction and expires on the day the city issues a certificate of occupancy. The DOR must keep a running total of all estimated sales and use tax deferrals and may not accept applications for the deferral after June 30, 2032.

A participant in the sale and use tax deferral program must file an annual report with the city including:
- a statement of the affordable housing units constructed on the property;
- certification that the property has not changed use;
- description of changes or improvements constructed; and
- any additional information requested by the city.

Beginning the year a certificate of occupancy is issued and each year thereafter for 10 years, the recipient must file a complete annual tax performance report with the DOR.

Within 30 days of issuance of a certificate of occupancy, the recipient must file with the city:
- a description of the work completed;
- a statement that the eligible investment project qualifies the property for a deferral;
- a statement of the new affordable housing to be offered; and
- a statement that the work has been completed within three years of deferral approval.

Within 30 days of receipt of the above, the city must determine whether the work is completed and the affordable housing offered is consistent with the application approved by the cities, and whether the investment project continues to qualify for a tax deferral. The city must notify a conditional recipient within 30 days that the deferral is denied. The governing authority may enact an ordinance to provide a process for appeal of a deferral decision.

A city participating in the program must file a report annually by December 31 of each year, beginning in 2022, to the Department of Commerce. The report must include the number of program approval certificates granted, the total number and type of new buildings constructed, the number of affordable housing units resulting from the new construction, and the estimated value of the sales and use tax deferral for each investment project.

Discontinued Use.
If a conditional recipient opts to discontinue compliance with the program, they must notify the city and the DOR within 60 days of the change in use or intended discontinuance.

If a city finds that a portion of the project is changed or will be changed in a manner that disqualifies the recipient, the city must notify the DOR and taxes deferred are immediately due and payable. The DOR must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date the sales and use tax deferral certificate was issued.

Tax Preference Performance Statement.
A TPPS is included identifying the legislative intent is to expand affordable housing options, and for the JLARC to evaluate the number of housing units on underdeveloped property and report to the Legislature by December 31, 2030. If the number of affordable housing units has not increased, the Legislature intends is to repeal the deferral program.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended version by the Finance Committee provides a more specific definition of 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. It also adds a requirement for recipients of a deferral of taxes to file an annual tax performance report with the DOR beginning the year of project completion and every year thereafter for 10 years, and adds a TPPS.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 5, 2022.

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

Staff Summary of Public Testimony:

(In support) Kent and Tacoma are welcoming a lot in terms of multimodal development, but they struggle to attract developers to make multifamily housing. The cities are in competition with developers in Seattle because of higher lease rates that are available in Seattle. Tacoma has many surface parking lots that could be made into multifamily housing easily. Kent has not had a non-subsidized multifamily housing building built in quite some time. This bill will turn surface parking lots into housing. This can be used in conjunction with tax increment financing programs because they have different tax bases.

(Opposed) The removal of parking lots makes it hard to deliver things from a truck or a boat.

Persons Testifying: (In support) Briahna Murray, Cities of Tacoma and Kent.

(Opposed) John Worthington.

Persons Signed In To Testify But Not Testifying: None.