SENATE BILL REPORT
SB 5287

As of January 26, 2021

Title: An act relating to affordable housing incentives.

Brief Description: Concerning affordable housing incentives.

Sponsors: Senators Das, Kuderer, Conway, Keiser, Liias, Nguyen, Nobles, Pedersen, Randall, Salomon and Wilson, C..

Brief History:
Committee Activity: Housing & Local Government: 1/26/21.

Brief Summary of Bill

- Expands the Multi-Family Property Tax Exemption (MFTE) to all cities and urban growth areas within any county with a population of at least 2 million.
- Adds affordability requirements and modifies the income requirements for the eight- year MFTE.
- Increases the affordability requirements and modifies the income requirements for the 12- year MFTE.
- Authorizes a 12- year extension of existing MFTEs that are set to expire.
- Establishes a new 20-year property tax exemption for the creation of permanently affordable homes.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Jeff Olsen (786-7428)

Background: 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 Multi-Family Property Tax Exemption

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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.

(MFTE) exempts real property associated with the construction, conversion, or rehabilitation of qualified, multiple-unit residential structures located in residential targeted areas (RTA) 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 available for a 12-year period if the owner commits to renting or selling at least 20 percent of multiple-family 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 multiple-family housing units for affordable housing in order to qualify for the 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 low-to-moderate income 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.

Summary of Bill: A local governing authority that may use designate RTAs for the MFTE is expanded to include any city and a county with a population of at least 2 million. The designation of RTAs in a county with a population of at least 2 million is limited to only be within an urban growth area within the county. RTAs must have an 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 definition of multiple-unit housing is modified to include a group of buildings having four or more dwelling units.

Low-income households include the lower of 80 percent of median family income in a city or county where the project is located. The median family income threshold for low-income households in high cost areas is reduced from 100 percent to 90 percent of median family income. For a moderate-income household, the income threshold is changed from more than 80 percent, but at or below 115 percent to at or below 90 percent of median family income adjusted for family size. For high cost areas, the moderate-income threshold is changed from more than 100 percent, but at or below 150 percent to household income at or below 100 percent of median family income. The income threshold for a very low-income household is established at or below 70 percent of median family income for the county or city where the project is located, whichever is lower. For high cost-areas, a very low-income household includes a household at or below 80 percent of median family income for the county or city where the project is located, whichever is lower.

For properties seeking an 8-year tax exemption, an applicant must commit to renting or selling at least 15 percent of the units to any combination of the following income levels and apartment sizes including: very low-income households with one or fewer bedrooms, low-income households for apartments with two bedrooms, or moderate-income households for apartments with three or more bedrooms.

To qualify for the 12-year tax exemption an applicant must commit to renting or selling at least 25 percent of the units to any combination of the following income levels and apartment sizes including very low-income households with one or fewer bedrooms, low-income households for apartments with two bedrooms, or moderate-income households for apartments with three or more bedrooms.

Any multiple-unit housing project located in an unincorporated area of a county must commit to renting or selling at least 25 percent of the units to any combination of income levels and apartment sizes including very low-income households with one or fewer bedrooms, low-income households for apartments with two bedrooms, or moderate-income households for apartments with three or more bedrooms.

A governing authority may request a temporary exemption from the affordability requirements of the 8-year tax exemption for the first two projects or when the three-year rolling average vacancy rate is at or below 1.5 percent. For properties applying for a temporary exemption from the affordability requirements for an 8-year exemption, the applicant must commit to renting or selling all units in the property at or below an affordable housing rate for a family of four whose adjusted income is at or below 115 percent of the median family income for the county or city where the projects is located, whichever is lower, if both are available.

A property that qualified for and used an 8-year or 12-year exemption 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 commit to rent or sell at least 25 percent of the housing units to any combination of the following income levels and apartment sizes including: very low-income households with one or fewer bedrooms, low-income households for apartments with two bedrooms, or moderate-income households for apartments with three or more bedrooms.

An MFTE applicant must provide notice to tenants of rent restricted units during the last two years of the exemption period. No more than three months before the expiration of any exemption, an MFTE applicant must provide to tenants of affordable units an option to continue to provide affordable rent as long as the tenant continues to occupy the unit, offer reasonable assistance to relocate, restrict rent increases to no more than 5 percent per year over four years, or convert the unit into a condominium and sell it to the tenant as affordable housing.

When establishing an RTA, a governing authority must conduct an evaluation of the risk potential of displacement of residents living in the area if the tax incentive is authorized. An area may not be designated as an RTA unless the evaluation finds the risk of displacement is minimal or the risk of displacement is mitigated. A governing authority must develop standards and guidelines for income and rent standards for affordable units to be used in considering applications for tax exemptions. 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.

The affordability requirements for the MFTE program may be met in whole or in part with affordable units that are required for any other incentive or exemption program, provided those units meet the minimum program requirements. If a local governing authority requires a mandatory percentage of inclusionary or affordable housing, those units may be used to lower the minimum percentage of affordable units required by the local governing authority.

A city or county must conduct an analysis of a project's profitability with and without the property tax exemption as part of the MFTE approval process. The Department of Commerce (Commerce) must provide guidance on the form and manner of the required profitability analysis. 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. Commerce must report annually to the Legislature and Joint Legislative Audit and Review Committee (JLARC) on compliance with MFTE reporting requirements.

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 non-profit 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 housing 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. Commerce must develop a template for deed restrictions that can be used by local governments.

Commerce must provide an annual report to the appropriate committees of the Legislature and JLARC on city and county compliance with MFTE reporting requirements. Commerce must convene a work group of stakeholders to identify ambiguities in the MFTE program and recommend any changes likely to increase the supply of affordable housing and examine rent increases for tenants living in affordable units. The work group must submit a report to the appropriate committees of the Legislature and JLARC by December 1, 2021.

Appropriation: None.

Fiscal Note: Requested on January 20, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The pandemic and rising housing costs have made housing affordability worse and it is a struggle to keep people housed. Stable housing leads to a healthy life. With the cost of housing, it is difficult for people to obtain home ownership. The state needs to work with builders to create more housing. This bill extends a tool that works for creating more housing and expands the types of housing and the locations where housing can qualify for the exemption. The 20- year exemption for permanently affordable housing is a great incentive serving those with lower incomes. The 12- year extension is an important part of the bill to maintain affordable units that are set to expire. The current MFTE is not a good value for taxpayers and oversight of the program needs to be increased. There is no public benefit for the 8 year MFTE program, and we need clear polices, goals and accountability.

CON: The new affordability requirements in the bill will negatively impact the feasibility for builders. There are very few tools to create more housing, and the MFTE is the most effective tool to build workforce housing. The changes in the bill will reduce the workability for builders and decrease housing built by the program. There needs to be local flexibility to implement the program. The 8- year MFTE is an economic development tool for the Growth Management Act to increase density. The MFTE program currently works, and it should be expanded. However, the bill in its current form by increasing affordability requirements and adding additional costs will cause developers to not use the program and will be a disincentive. There are already areas that are not using the 12- year program, and we need to keep the 8- year program the same. There are increased demands including a profitability analysis, displacement language, and prevailing wages that will act as a disincentive. The affordability requirements will be too onerous in some areas, and developers will not use the program. There needs to be more dialogue on the bill. The original intent under the Growth Management Act was to increase housing to meet growth. The MFTE worked well as an incentive for developers. The provision to conduct a profitability analysis with data provided by developers and the increased administrative burdens in the bill are challenging. The 12-year exemption may need to be longer. While there are positive changes by offering renewal of expiring exemptions, expanding the program and creating permanent affordability, the other changes to the program impact too many cities and create new barriers to the program. The tenant protections in the bill are duplicative of current law under the landlord tenant section. For example, there are already provisions for giving 120 days notice to tenants.

OTHER: There needs to be greater flexibility in the MFTE program to cater to local conditions. The MFTE should be as flexible as possible to attract development. Some cities use the program to achieve deeper affordability, and the changes to the MFTE program make it harder to cater to local needs. The dials for the program need to be turned at the local level.

Persons Testifying: PRO: Senator Mona Das, Prime Sponsor; Paul Jewell, Washington State Association of Counties; Michael Mann, Cyan Strategies/SLI; Michone Preston, Habitat for Humanity of Washington State; Maureen Fife, Tacoma/Pierce County Habitat for Humanity; Ryan Donohue, Habitat for Humanity of Seattle-King County; Uche Okezie, HomeSight; Olgy Diaz, Forterra; Nick Federici, Washington Low Income Housing Alliance.

CON: Debbie Bingham, City of Tacoma; Mark Santos-Johnson, City of Renton, Community Development and Housing Manager; Greg Hanon, NAIOP; McKenzie Darr, The Wolff Company; Bradon Morgan, Vulcan Real Estate, citizen; Krystelle Purkey, Washington Multi-Family Housing Association; Chad Eiken, City of Vancouver; Carl Schroeder, Association of Washington Cities.

OTHER: Carol Helland, City of Redmond.

Persons Signed In To Testify But Not Testifying: No one.