SENATE BILL REPORT
SB 5287

As of February 19, 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, 2/11/21 [DPS-WM, w/oRec].
Ways & Means: 2/19/21.

Brief Summary of First Substitute Bill

- Authorizes a 12-year extension of existing 8-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 the creation of permanently affordable homes.
- Temporarily expands the 12- year MFTE and the 20- year exemption for permanently affordable homes to all cities until December 31, 2024 if they meet certain density requirements.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5287 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett and Salomon.

Minority Report: That it be referred without recommendation.
Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Warnick.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

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 (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.

At the conclusion of the exemption period, the new or rehabilitated housing cost shall be considered as new construction for the property tax purposes.

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. For high cost areas, areas in a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than 130 thirty percent of the statewide median house price published during the same time period, higher median family incomes are allowed. For cities located in high-cost areas, low-income household means a household that has an income at or below 100 percent of the median family income adjusted for family size, for the county where the project is located. In addition, for cities located in high-cost areas, moderate-income household means a household that has an income more than 100 percent, but at or below 150 percent, of the median family income adjusted for family size, for the county where the project is located.

Summary of Bill (First Substitute): Until December 31, 2024, any city 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.

The definition of multiple-unit housing is modified to include a group of buildings have 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 median-income household median family income thresholds for high cost areas are removed from the MFTE program.

A property that qualified for and used an 8-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.

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.

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.

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 1st of each year. A city or county must be in compliance with reporting requirements to offer certificates of tax exemption under the MFTE program.

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 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.

EFFECT OF CHANGES MADE BY HOUSING & LOCAL GOVERNMENT COMMITTEE (First Substitute):

- Removes the permanent expansion of the MFTE to all cities, and authorizes all cities to use the 12-year MFTE and the newly created 20-year permanent affordability exemption until December 2024 if they meet certain density requirements.
- Except for cities that choose to use the temporary authority under the MFTE, removes new density requirements for all other residential targeted areas under the MFTE

program.

- Removes the expansion of the MFTE program to any county with a population of at least 2 million.
- Removes the affordability requirements for the 8-year MFTE exemption and maintains the current affordability requirement for the 12- year MFTE exemption.
- Removes the increase in affordability requirements from 20 percent to 25 percent for multiunit housing located in unincorporated areas of a county.
- Reduces the affordability threshold from 25 percent to 20 percent for properties seeking to extend an expiring MFTE for an additional 12 years.
- Removes the definition of high cost areas and the corresponding adjusted median family income thresholds for low and moderate income households in high cost areas.
- Removes the creation of "very low-income households" and restores existing definitions for low-income and moderate-income households.
- Removes provisions allowing a local government to use other affordability requirements to offset MFTE affordability requirements.
- Removes the requirement for governing authorities to conduct an evaluation of potential displacement of residents under the MFTE program.
- Removes the Department of Commerce study of the MFTE program.
- Removes the requirement for a city or county to conduct a project profitability analysis with and without the MFTE.
- Modifies the annual reporting date for cities and counties to report to the Department of Commerce from December 31st to April 1st of each year.
- Requires a city or county to be in compliance with reporting requirements to offer certificates of tax exemption under the MFTE program.
- Modifies the definition of county for purposes of the MFTE program by reducing the unincorporated population threshold from 350,000 to 170,000.
- Removes the requirement for Commerce to report annually to the Legislature and JLARC on compliance with MFTE reporting requirements.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Housing & Local Government): *The committee recommended a different version of the bill than what was heard.* 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 (Housing & Local Government): 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 (Housing & Local Government): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: The Legislature should consider providing an extension to developers whose projects were delayed due to COVID-19 shutdowns. This bill is a step in the right direction to fixing some of the issues in the underlying MFTE program. The income targets are still too high, but including the city over regional average median income helps. The bill does not provide local governments with the authority to create additional MFTE requirements. The new 20-year extension is a vital tool for increasing affordable homeownership and allows for the expansion of new projects in new areas. The benefit of the 20-year extension passes to the homeowners themselves who will save money over the life of their mortgage. This bill helps create the opportunity for a broader range of affordable housing types.

OTHER: Clarity is needed around the reinstated 12-year tax exemption. Additional costs associated with participation in the program impact project feasibility. The 12-year exemptions preserves affordable housing for those properties that are about to lose their exemption.

Persons Testifying (Ways & Means): PRO: Seth Dallob, NexGen Housing Partners; Michele Thomas, Washington Low Income Housing Alliance; Adan Espino Jr, Habitat for Humanity of Washington State; Ryan Donohue, Habitat for Humanity Seattle-King County; Carl Schroeder, Association of Washington Cities.

OTHER: Michael Mann, Cyan Strategies/Sustainable Living Innovations; Drew Johnston, Vulcan; Greg Hanon, NAIOP.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.