
SUBSTITUTE SENATE BILL 5755

State of Washington

67th Legislature

2022 Regular Session

By Senate Housing & Local Government (originally sponsored by Senators Trudeau, Billig, Nobles, Saldaña, and Wellman)

READ FIRST TIME 02/02/22.

1 AN ACT Relating to authorizing certain cities to establish a
2 limited sales and use tax incentive program to encourage
3 redevelopment of vacant lands in urban areas; adding a new chapter to
4 Title 82 RCW; and providing expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that:

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

9 (2) The construction industry provides living wage jobs for
10 families across Washington;

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

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

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

1 (6) This limited tax deferral will help the owners of vacant or
2 undeveloped property achieve the highest and best use of land and
3 enable cities to more fully realize their planning goals; and

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

8 NEW SECTION. **Sec. 2.** It is the purpose of this chapter to
9 encourage the redevelopment of vacant or undeveloped land in targeted
10 urban areas, thereby increasing affordable housing, employment
11 opportunities, and helping accomplish the other planning goals of
12 Washington cities. The legislative authorities of cities to which
13 this chapter applies may authorize a sales and use tax deferral for
14 an investment project within the city if the legislative authority of
15 the city finds that there are both significant areas of vacant,
16 underdeveloped, or undeveloped land and a lack of affordable housing
17 in areas proximate to the vacant, underdeveloped, or undeveloped
18 land. If a conditional recipient maintains the property for
19 qualifying purposes for at least 10 years, deferred sales and use
20 taxes need not be repaid.

21 NEW SECTION. **Sec. 3.** The definitions in this section apply
22 throughout this chapter unless the context clearly requires
23 otherwise.

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

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

32 (3) "Applicant" means an owner of vacant or undeveloped property.

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

36 (5) "Conditional recipient" means an owner of vacant or
37 undeveloped land granted a conditional certificate of program

1 approval under this chapter, which includes any successor owner of
2 the property.

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

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

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

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

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

17 (11)(a) "Initiation of construction" means the date that a
18 building permit is issued under the building code adopted under RCW
19 19.27.031 for construction of the qualified building, if the
20 underlying ownership of the building vests exclusively with the
21 person receiving the economic benefit of the deferral.

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

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

28 (12) "Investment project" means an investment in multifamily
29 housing, including labor, services, and materials incorporated in the
30 planning, installation, and construction of the project. "Investment
31 project" includes investment in related facilities such as
32 playgrounds and sidewalks as well as facilities used for business use
33 for mixed-use development.

34 (13) "Low-income household" means a single person, family, or
35 unrelated persons living together whose adjusted income is more than
36 50 percent but is at or below 80 percent of the median family income
37 adjusted for family size, for the county, city, or metropolitan
38 statistical area, where the project is located, as reported by the
39 United States department of housing and urban development.

1 (14) "Moderate-income household" means a single person, family,
2 or unrelated persons living together whose adjusted income is more
3 than 80 percent but is at or below 115 percent of the median family
4 income adjusted for family size, for the county, city, or
5 metropolitan statistical area, where the project is located, as
6 reported by the United States department of housing and urban
7 development.

8 (15) "Multifamily housing" means a building or a group of
9 buildings having two or more dwelling units not designed or used as
10 transient accommodations and not including hotels and motels.
11 Multifamily units may result from new construction or rehabilitation
12 or conversion of vacant, underutilized, or substandard buildings to
13 multifamily housing.

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

15 (17) "Vacant or underdeveloped" means that there are no existing
16 habitable building improvements on the property which is targeted for
17 new or expanded residential or mixed uses, or the existing
18 residential building improvements do not meet the maximum permitted
19 density.

20 (18) "Very low-income household" means a single person, family,
21 or unrelated persons living together whose adjusted income is at or
22 below 50 percent of the median family income adjusted for family
23 size, for the county, city, or metropolitan statistical area, where
24 the project is located, as reported by the United States department
25 of housing and urban development.

26 NEW SECTION. **Sec. 4.** (1) For the purpose of creating a sales
27 and use tax deferral program under this chapter, the governing
28 authority must adopt a resolution of intention to create a sales and
29 use tax deferral program as generally described in the resolution.
30 The resolution must state the time and place of a hearing to be held
31 by the governing authority to consider the creation of the tax
32 deferral program and may include such other information pertaining to
33 the creation of the deferral program as the governing authority
34 determines to be appropriate to apprise the public of the action
35 intended. However, the resolution must provide information pertaining
36 to:

- 37 (a) The application process;
38 (b) The approval process;
39 (c) The appeals process for applications denied approval; and

1 (d) Additional requirements, conditions, and obligations that
2 must be followed postapproval of an application.

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

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

11 NEW SECTION. **Sec. 5.** An owner of vacant or undeveloped property
12 seeking a sales and use tax deferral under this chapter on an
13 investment project must complete the following procedures:

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

16 (a) Information setting forth the grounds supporting the
17 requested deferral including information indicated on the application
18 form or in the guidelines;

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

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

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

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

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

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

36 (2) The applicant must verify the application by oath or
37 affirmation; and

38 (3) The application must be accompanied by the application fee,
39 if any, required under this chapter. The duly authorized

1 administrative official or committee of the city may permit the
2 applicant to revise an application before final action by the duly
3 authorized administrative official or committee of the city.

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

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

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

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

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

24 (3) The investment project will occur on land that is vacant or
25 undeveloped;

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

28 (5) The terms and conditions of the implementation of the
29 development meets the requirements of this chapter and any
30 requirements of the city that are not otherwise inconsistent with
31 this chapter; and

32 (6) All other requirements of this chapter have been satisfied as
33 well as any other requirements of the city that are not otherwise
34 inconsistent with this chapter.

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

1 (2) If the application is approved, the city must issue the
2 applicant a conditional certificate of program approval. The
3 certificate must contain a statement by a duly authorized
4 administrative official of the governing authority that the
5 investment project as described in the application will comply with
6 the required criteria of this chapter.

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

11 (4) Upon denial by the city, an applicant may appeal the denial
12 to the city's governing authority or a city official designated by
13 the city to hear such appeals within 30 days after receipt of the
14 denial. The appeal before the city's governing authority or
15 designated city official must be based upon the record made before
16 the city with the burden of proof on the applicant to show that there
17 was no substantial evidence to support the city's decision. The
18 decision of the city on the appeal is final.

19 NEW SECTION. **Sec. 8.** The governing authority may establish an
20 application fee. This fee may not exceed an amount determined to be
21 required to cover the cost to be incurred by the governing authority
22 in administering the program under this chapter. The application fee
23 must be paid at the time the application for program approval is
24 filed.

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

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

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

33 (c) A statement that the work has been completed within three
34 years of the issuance of the conditional certificate of program
35 approval.

36 (2) Within 30 days after receipt of the statements required under
37 subsection (1) of this section, the city must determine and notify
38 the conditional recipient as to whether the work completed and the

1 affordable housing to be offered are consistent with the application
2 and the contract approved by the city, and the investment project
3 continues to qualify for a tax deferral under this chapter. The
4 conditional recipient must notify the department within 30 days from
5 receiving the city's determination to schedule an audit of the
6 deferred taxes. The department must determine the amount of sales and
7 use taxes qualifying for the deferral. If the department determines
8 that purchases were not eligible for deferral it must assess
9 interest, but not penalties, on the nonqualifying amounts.

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

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

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

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

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

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

28 (5) The city's governing authority may enact an ordinance to
29 provide a process for a conditional recipient to appeal a decision by
30 the city that the conditional recipient is not entitled to a deferral
31 of sales and use taxes. The conditional recipient may appeal a
32 decision by the city to deny a deferral of sales and use taxes in
33 superior court under RCW 34.05.510 through 34.05.598, if the appeal
34 is filed within 30 days of notification by the city to the
35 conditional recipient.

36 (6) A city denying a conditional recipient of a sales and use tax
37 deferral under subsection (3) of this section must notify the
38 department and taxes deferred under this chapter are immediately due
39 and payable, subject to any appeal by the conditional recipient. The
40 department must assess interest at the rate provided for delinquent

1 taxes and penalties retroactively to the date of deferral. A debt for
2 deferred taxes will not be extinguished by insolvency or other
3 failure of the recipient.

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

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

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

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

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

16 (2) A city that issues a certificate of program approval under
17 this chapter must report annually by December 31st of each year,
18 beginning in 2022, to the department of commerce. The report must
19 include the following information:

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

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

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

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

27 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit
28 an application to the department before initiation of the
29 construction of the investment project. In the case of an investment
30 project involving multiple qualified buildings, applications must be
31 made for, and before the initiation of construction of, each
32 qualified building. The application must be made to the department in
33 a form and manner prescribed by the department. The application must
34 include a copy of the conditional certificate of program approval
35 issued by the city, estimated construction costs, time schedules for
36 completion and operation, and any other information required by the
37 department. The department must rule on the application within 60
38 days.

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

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

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

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

10 NEW SECTION. **Sec. 12.** (1) After receiving the conditional
11 certificate of program approval issued by the city and provided to
12 the department by the applicant, the department must issue a sales
13 and use tax deferral certificate for state and local sales and use
14 taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible
15 investment project.

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

19 (3) The deferral certificate is valid during active construction
20 of a qualified investment project and expires on the day the city
21 issues a certificate of occupancy for the investment project for
22 which a deferral certificate was issued.

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

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

28 (2) If, after the department has issued a sales and use tax
29 deferral certificate and the conditional recipient has received a
30 certificate of occupancy, the city finds that a portion of an
31 investment project is changed or will be changed to disqualify the
32 recipient for sales and use tax deferral eligibility under this
33 chapter, the city must notify the department and all deferred sales
34 and use taxes are immediately due and payable. The department must
35 assess interest at the rate provided for delinquent taxes and
36 penalties retroactively to the date of deferral. A debt for deferred
37 taxes will not be extinguished by insolvency or other failure of the
38 recipient.

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

3 NEW SECTION. **Sec. 14.** (1) Transfer of investment project
4 ownership does not terminate the deferral. The deferral is
5 transferred subject to the successor meeting the eligibility
6 requirements of this chapter.

7 (2) The transferor of an eligible project must notify the city
8 and the department of such transfer. The city must certify to the
9 department that the successor meets the requirements of the deferral.
10 The transferor must provide the information necessary for the
11 department to transfer the deferral. If the transferor fails to
12 notify the city and the department, all deferred sales and use taxes
13 are immediately due and payable. The department must assess interest
14 at the rate provided for delinquent taxes and penalties retroactively
15 to the date of deferral.

16 NEW SECTION. **Sec. 15.** The provisions of RCW 82.32.805 and
17 82.32.808 do not apply to this act.

18 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
19 constitute a new chapter in Title 82 RCW.

20 NEW SECTION. **Sec. 17.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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