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**SECOND SUBSTITUTE SENATE BILL 5755**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Trudeau, Billig, Nobles, Saldaña, and Wellman)

READ FIRST TIME 02/28/22.

1 AN ACT Relating to authorizing certain cities to establish a  
2 limited sales and use tax incentive program to encourage  
3 redevelopment of underdeveloped lands in urban areas; adding a new  
4 chapter to 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 underdeveloped property  
18 in targeted urban areas through a limited sales and use tax deferral  
19 program as provided by this chapter;

1 (6) This limited tax deferral will help the owners of  
2 underdeveloped 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 underdeveloped land in targeted urban  
10 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 significant areas of underdeveloped  
16 land and a lack of affordable housing in areas proximate to the land.  
17 If a conditional recipient maintains the property for qualifying  
18 purposes for at least 10 years, deferred sales and use taxes need not  
19 be repaid.

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

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

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

31 (3) "Applicant" means an owner of underdeveloped property.

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

35 (5) "Conditional recipient" means an owner of underdeveloped land  
36 granted a conditional certificate of program approval under this  
37 chapter, which includes any successor owner of the property.

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

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

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

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

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

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

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

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

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

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

38 (14) "Moderate-income household" means a single person, family,  
39 or unrelated persons living together whose adjusted income is more  
40 than 80 percent but is at or below 115 percent of the median family

1 income adjusted for family size, for the county, city, or  
2 metropolitan statistical area, where the project is located, as  
3 reported by the United States department of housing and urban  
4 development.

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

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

12 (17) "Underdeveloped property" means land used as a surface  
13 parking lot as of the effective date of this section.

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

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

- 31 (a) The application process;
- 32 (b) The approval process;
- 33 (c) The appeals process for applications denied approval; and
- 34 (d) Additional requirements, conditions, and obligations that  
35 must be followed postapproval of an application.

36 (2) The governing authority must give notice of a hearing held  
37 under this chapter by publication of the notice once each week for  
38 two consecutive weeks, not less than seven days, nor more than 30  
39 days before the date of the hearing in a paper having a general

1 circulation in the city. The notice must state the time, date, place,  
2 and purpose of the hearing.

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

5 NEW SECTION. **Sec. 5.** An owner of underdeveloped property  
6 seeking a sales and use tax deferral under this chapter on an  
7 investment project must complete the following procedures:

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

10 (a) Information setting forth the grounds supporting the  
11 requested deferral including information indicated on the application  
12 form or in the guidelines;

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

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

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

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

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

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

30 (2) The applicant must verify the application by oath or  
31 affirmation; and

32 (3) The application must be accompanied by the application fee,  
33 if any, required under this chapter. The duly authorized  
34 administrative official or committee of the city may permit the  
35 applicant to revise an application before final action by the duly  
36 authorized administrative official or committee of the city.

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

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

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

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

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

21        (3) The investment project will occur on land that constitutes  
22 underdeveloped property;

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

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

29        (6) The land where the investment project will occur was not  
30 acquired through a condemnation proceeding under Title 8 RCW; and

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

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

38        (2) If the application is approved, the city must issue the  
39 applicant a conditional certificate of program approval. The

1 certificate must contain a statement by a duly authorized  
2 administrative official of the governing authority that the  
3 investment project as described in the application will comply with  
4 the required criteria of this chapter.

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

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

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

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

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

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

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

34 (2) Within 30 days after receipt of the statements required under  
35 subsection (1) of this section, the city must determine and notify  
36 the conditional recipient as to whether the work completed and the  
37 affordable housing to be offered are consistent with the application  
38 and the contract approved by the city, and the investment project

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

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

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

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

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

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

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

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

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



1 deferred taxes will not be extinguished by insolvency or other  
2 failure of the recipient.

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit  
27 an application to the department before initiation of the  
28 construction of the investment project. In the case of an investment  
29 project involving multiple qualified buildings, applications must be  
30 made for, and before the initiation of construction of, each  
31 qualified building. The application must be made to the department in  
32 a form and manner prescribed by the department. The application must  
33 include a copy of the conditional certificate of program approval  
34 issued by the city, estimated construction costs, time schedules for  
35 completion and operation, and any other information required by the  
36 department. The department must rule on the application within 60  
37 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.** RCW 82.32.805 and 82.32.808 do not apply  
17 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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