
SENATE BILL 5755

State of Washington

67th Legislature

2022 Regular Session

By Senators Trudeau, Billig, Nobles, Saldaña, and Wellman

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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; and

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.

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

16 NEW SECTION. **Sec. 3.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Affordable housing" means multifamily housing that is rented
20 by a person or household whose monthly housing costs, including
21 utilities other than telephone, do not exceed 30 percent of the
22 household's monthly income. "Affordable housing" also means
23 multifamily housing that is within the means of low or moderate-
24 income households for the purposes of housing intended for owner
25 occupancy.

26 (2) "Applicant" means an owner of vacant or undeveloped property.

27 (3) "City" means a city with a population of at least 150,000 and
28 not more than 250,000 at the time the city initially establishes the
29 program under this section.

30 (4) "Conditional recipient" means an owner of vacant or
31 undeveloped land granted a conditional certificate of program
32 approval under this chapter, which includes any successor owner of
33 the property.

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

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

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

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

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

12 (10) "Investment project" means an investment in multifamily
13 housing, including labor, services, and materials incorporated in the
14 planning, installation, and construction of the project. "Investment
15 project" includes investment in related facilities such as
16 playgrounds and sidewalks as well as facilities used for business use
17 for mixed-use development.

18 (11) "Low-income household" means a single person, family, or
19 unrelated persons living together whose adjusted income is at or
20 below 80 percent of the median family income adjusted for family
21 size, for the county, city, or metropolitan statistical area, where
22 the project is located, as reported by the United States department
23 of housing and urban development.

24 (12) "Moderate-income household" means a single person, family,
25 or unrelated persons living together whose adjusted income is more
26 than 80 percent but is at or below 115 percent of the median family
27 income adjusted for family size, for the county, city, or
28 metropolitan statistical area, where the project is located, as
29 reported by the United States department of housing and urban
30 development.

31 (13) "Multifamily housing" has the same meaning as "multiple-unit
32 housing" in RCW 84.14.010.

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

34 (15) "Vacant or undeveloped" means that there are no existing
35 habitable building improvements on the property which is targeted for
36 new or expanded residential or mixed uses.

37 NEW SECTION. **Sec. 4.** (1) For the purpose of creating a sales
38 and use tax deferral program under this chapter, the governing
39 authority must adopt a resolution of intention to create a sales and

1 use tax deferral program as generally described in the resolution.
2 The resolution must state the time and place of a hearing to be held
3 by the governing authority to consider the creation of the tax
4 deferral program and may include such other information pertaining to
5 the creation of the deferral program as the governing authority
6 determines to be appropriate to apprise the public of the action
7 intended. However, the resolution must provide information pertaining
8 to:

- 9 (a) The application process;
 - 10 (b) The approval process;
 - 11 (c) The appeals process for applications denied approval; and
 - 12 (d) Additional requirements, conditions, and obligations that
13 must be followed postapproval of an application.
- 14 (2) The governing authority must give notice of a hearing held
15 under this chapter by publication of the notice once each week for
16 two consecutive weeks, not less than seven days, nor more than 30
17 days before the date of the hearing in a paper having a general
18 circulation in the city. The notice must state the time, date, place,
19 and purpose of the hearing.
- 20 (3) Following the hearing or a continuance of the hearing, the
21 governing authority may authorize the creation of the program.

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

- 25 (1) The owner must apply to the city on forms adopted by the
26 governing authority. The application must contain the following:
 - 27 (a) Information setting forth the grounds supporting the
28 requested deferral including information indicated on the application
29 form or in the guidelines;
 - 30 (b) A description of the investment project and site plan, and
31 other information requested;
 - 32 (c) A statement of the expected number of affordable housing
33 units to be created;
 - 34 (d) A statement that the applicant is aware of the potential tax
35 liability involved if the investment project ceases to be used for
36 eligible uses under this chapter;
 - 37 (e) A statement that the applicant is aware that the investment
38 project must be completed within three years from the date of
39 approval of the application; and

1 (f) A statement that the applicant would not have built in this
2 location but for the availability of the tax deferral under this
3 chapter;

4 (2) The applicant must verify the application by oath or
5 affirmation; and

6 (3) The application must be accompanied by the application fee,
7 if any, required under this chapter. The duly authorized
8 administrative official or committee of the city may permit the
9 applicant to revise an application before final action by the duly
10 authorized administrative official or committee of the city.

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

14 (1)(a) The investment project is set aside primarily for
15 multifamily housing units and the applicant commits to renting or
16 selling at least 50 percent of the units as affordable housing units
17 to low and moderate-income households. In a mixed use project, only
18 the ground floor of a building may be used for commercial purposes
19 with the remainder dedicated to multifamily housing units;

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

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

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

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

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

34 (5) The terms and conditions of the implementation of the
35 development meets the requirements of this chapter and any
36 requirements of the city that are not otherwise inconsistent with
37 this chapter; and

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

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

8 (2) If the application is approved, the city must issue the
9 applicant a conditional certificate of program approval. The
10 certificate must contain a statement by a duly authorized
11 administrative official of the governing authority that the
12 investment project as described in the application will comply with
13 the required criteria of this chapter.

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

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

26 NEW SECTION. **Sec. 8.** The governing authority may establish an
27 application fee. This fee may not exceed an amount determined to be
28 required to cover the cost to be incurred by the governing authority
29 in administering the program under this chapter. The application fee
30 must be paid at the time the application for program approval is
31 filed.

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

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

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

3 (c) A statement that the work has been completed within three
4 years of the issuance of the conditional certificate of program
5 approval.

6 (2) Within 30 days after receipt of the statements required under
7 subsection (1) of this section, the city must determine and notify
8 the conditional recipient as to whether the work completed and the
9 affordable housing to be offered are consistent with the application
10 and the contract approved by the city, and the investment project
11 continues to qualify for a tax deferral under this chapter.

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

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

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

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

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

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

30 (5) The city's governing authority may enact an ordinance to
31 provide a process for a conditional recipient to appeal a decision by
32 the city that the conditional recipient is not entitled to a
33 continued deferral of sales and use taxes. The conditional recipient
34 may appeal a decision by the city to deny a continued deferral of
35 sales and use taxes in superior court under RCW 34.05.510 through
36 34.05.598, if the appeal is filed within 30 days of notification by
37 the city to the conditional recipient.

38 (6) A city denying a conditional recipient of a continued sales
39 and use tax deferral under subsection (3) of this section must notify
40 the department and taxes deferred under this chapter are immediately

1 due and payable, subject to any appeal by the conditional recipient.
2 The department must assess interest at the rate provided for
3 delinquent taxes and penalties retroactively to the date the sales
4 and use tax deferral certificate was issued under section 12 of this
5 act. A debt for deferred taxes will not be extinguished by insolvency
6 or other failure of the recipient. Transfer of ownership does not
7 terminate the deferral. The deferral is transferred, subject to the
8 successor meeting the eligibility requirements of this chapter.

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

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

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

18 (c) A description of changes or improvements constructed after
19 issuance of the conditional certificate of tax deferral; and

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

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

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

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

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

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

32 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit
33 an application to the department before initiation of the
34 construction of the investment project. The application must be made
35 to the department in a form and manner prescribed by the department.
36 The application must include a copy of the conditional certificate of
37 program approval issued by the city, estimated construction costs,
38 time schedules for completion and operation, and any other

1 information required by the department. The department must rule on
2 the application within 30 days.

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

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

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

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

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

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

21 (3) This section expires July 1, 2032.

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

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

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

3 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
4 constitute a new chapter in Title 82 RCW.

5 NEW SECTION. **Sec. 15.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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