

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5755

67th Legislature
2022 Regular Session

Passed by the Senate March 10, 2022
Yeas 27 Nays 21

President of the Senate

Passed by the House March 9, 2022
Yeas 66 Nays 31

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5755** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5755

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

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; creating a new section; and providing
5 expiration dates.

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

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

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

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

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

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

17 (5) A meaningful, fair, and predictable economic incentive should
18 be created to stimulate the redevelopment of underdeveloped property
19 in targeted urban areas through a limited sales and use tax deferral
20 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 for parking of motor vehicles off the street or highway,
14 that is open to public use with or without charge, as of the
15 effective date of this section.

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

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

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

38 (2) The governing authority must give notice of a hearing held
39 under this chapter by publication of the notice once each week for

1 two consecutive weeks, not less than seven days, nor more than 30
2 days before the date of the hearing in a paper having a general
3 circulation in the city. The notice must state the time, date, place,
4 and purpose of the hearing.

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

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

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

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

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

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

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

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

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

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

32 (2) The applicant must verify the application by oath or
33 affirmation; and

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

1 NEW SECTION.

2 **Sec. 6.**

3 The duly authorized administrative
4 official or committee of the city may approve the application and
5 grant a conditional certificate of program approval if it finds that:

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

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

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

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

23 (3) The investment project will occur on land that constitutes
24 underdeveloped property;

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

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

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

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

36 NEW SECTION.

37 **Sec. 7.**

38 (1) The duly authorized administrative
39 official or committee of the city must approve or deny an application
40 filed under this chapter within 90 days after receipt of the
41 application.

42 (2) If the application is approved, the city must issue the
43 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) The conditional recipient of a deferral of taxes under this
16 chapter must file a complete annual tax performance report with the
17 department pursuant to RCW 82.32.534 beginning the year the
18 certificate of occupancy is issued and each year thereafter for 10
19 years.

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

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

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

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

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

31 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit
32 an application to the department before initiation of the
33 construction of the investment project. In the case of an investment
34 project involving multiple qualified buildings, applications must be
35 made for, and before the initiation of construction of, each
36 qualified building. The application must be made to the department in
37 a form and manner prescribed by the department. The application must
38 include a copy of the conditional certificate of program approval

1 issued by the city, estimated construction costs, time schedules for
2 completion and operation, and any other information required by the
3 department. The department must rule on the application within 60
4 days.

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

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

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

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

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

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

23 (3) The deferral certificate is valid during active construction
24 of a qualified investment project and expires on the day the city
25 issues a certificate of occupancy for the investment project for
26 which a deferral certificate was issued.

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

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

32 (2) If, after the department has issued a sales and use tax
33 deferral certificate and the conditional recipient has received a
34 certificate of occupancy, the city finds that a portion of an
35 investment project is changed or will be changed to disqualify the
36 recipient for sales and use tax deferral eligibility under this
37 chapter, the city must notify the department and all deferred sales
38 and use taxes are immediately due and payable. The department must

1 assess interest at the rate provided for delinquent taxes and
2 penalties retroactively to the date of deferral. A debt for deferred
3 taxes will not be extinguished by insolvency or other failure of the
4 recipient.

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

7 NEW SECTION. **Sec. 14.** (1) Transfer of investment project
8 ownership does not terminate the deferral. The deferral is
9 transferred subject to the successor meeting the eligibility
10 requirements of this chapter.

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

20 NEW SECTION. **Sec. 15.** (1) This section is the tax preference
21 performance statement for the tax preference contained in
22 chapter . . . , Laws of 2022 (this act). This performance statement is
23 only intended to be used for subsequent evaluation of the tax
24 preference. It is not intended to create a private right of action by
25 any party or to be used to determine eligibility for preferential tax
26 treatment.

27 (2) The legislature categorizes this tax preference as one
28 intended to induce certain designated behavior by taxpayers, as
29 indicated in RCW 82.32.808(2) (a).

30 (3) It is the legislature's specific public policy objective to
31 expand affordable housing options for very low to moderate-income
32 households, specifically in underdeveloped urban areas.

33 (4) (a) To measure the effectiveness of the tax preference in this
34 act, the joint legislative audit and review committee must evaluate
35 the number of increased housing units on underdeveloped property. If
36 a review finds that the number of affordable housing units has not
37 increased, then the legislature intends to repeal this tax
38 preference.

1 (b) The review must be provided to the fiscal committees of the
2 legislature by December 31, 2030.

3 (5) In order to obtain the data necessary to perform the review
4 in subsection (4) of this section, the joint legislative audit and
5 review committee may refer to any available data source, including
6 data collected by the department under section 10 of this act.

7 NEW SECTION. **Sec. 16.** Sections 1 through 14 of this act
8 constitute a new chapter in Title 82 RCW.

9 NEW SECTION. **Sec. 17.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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