

SENATE BILL REPORT

E2SSB 6175

As Passed Senate, February 9, 2024

Title: An act relating to providing a sales and use tax incentive for existing structures.

Brief Description: Concerning housing affordability tax incentives for existing structures.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Trudeau, Billig, Frame, Kuderer, Mullet, Nguyen, Nobles, Randall, Saldaña, Valdez and Wilson, C.).

Brief History:

Committee Activity: Housing: 1/24/24, 1/26/24 [DPS-WM, w/oRec].

Ways & Means: 2/01/24, 2/05/24 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 2/9/24, 48-1.

Brief Summary of Engrossed Second Substitute Bill

- Allows a city to establish a retail sales and use tax deferral program for the conversion of underutilized commercial property to affordable housing.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 6175 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Cleveland, Saldaña, Shewmake and Trudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and Gildon.

Staff: Melissa Van Gorkom (786-7491)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6175 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hunt, Keiser, Pedersen, Randall, Saldaña, Van De Wege, Wagoner and Wellman.

Minority Report: Do not pass.

Signed by Senator Schoesler, Ranking Member, Capital.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Hasegawa, Muzzall and Torres.

Staff: Alia Kennedy (786-7405)

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent.

The Multi-Family Property Tax Exemption. The multi-family property tax exemption (MFTE) exempts real property associated with the construction, conversion, or rehabilitation of qualified, multiple-unit residential structures. Property owners must submit an application for the tax exemption to the designated city or county. The city or county may include additional eligibility requirements for the tax exemptions. Tax exemptions available under the statute include:

- eight-year exemption;
- 12-year exemption if the applicant commits to renting or selling at least 20 percent of multiple-family housing units as affordable housing to low- and moderate-income households; and
- 20-year exemption if applicant commits to renting at least 20 percent of dwelling units to low-income households for a term of 99 years.

Tax Preference Performance Statement. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a tax preference performance

statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

Summary of Engrossed Second Substitute Bill: Sales and Use Tax Exemption. A city governing authority may establish by resolution a sales and use tax deferral for a conversion of a commercial building to provide affordable housing within the city if the legislative authority finds that there are significant areas of underutilized commercial property and a lack of affordable housing in areas proximate to the land. The resolution must include the application process, including the approval and appeals process, and additional requirements, conditions, and obligations that must be followed post approval of an application. A governing authority must hold a hearing and provide notice of the time, date, and location of the hearing in a paper of general circulation in the city once a week for two consecutive weeks 7 to 30 days before the hearing.

An authorized administrative official or committee of the city may approve an application and grant a conditional certificate of program approval if:

- the investment project is set aside primarily for multifamily housing units and the applicant commits to renting or selling at least 10 percent of the units as affordable housing to low-income households;
- at least 50 percent of the investment project set aside primarily for multifamily housing units will be rented at a price at or below fair market rent—as published by the federal department of housing and urban development for the county—or sold at a price at or below county median price—as published by the Washington Center for Real Estate Research—;
- the applicant commits to any additional affordability and income eligibility conditions adopted by the local government;
- the project will occur on underutilized commercial property and is, or will be at the time of completion, in conformance with all local plans and regulations;
- the area is located within an area zoned for residential or mixed uses and was not acquired through a condemnation proceeding; and
- all other requirements of the city are met.

If a conditional recipient maintains the property for qualifying purposes for at least ten years, deferred sales and use taxes need not be repaid.

Application. To receive an exemption an owner of property must apply to the city on forms adopted by the city and verify the information provided in the application by oath or affirmation. The application must contain:

- information supporting the requested deferral;
- a description of the investment project and site plan, and other information requested;
- a statement of the expected number of affordable housing units to be created;

- a statement that the applicant is aware of potential tax liability involved if the investment project ceases to be used for eligible uses;
- a statement that the applicant is aware that the investment project must be completed within three years and the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 months; and
- a statement that the applicant would not have built in this location but for the availability of the tax deferral.

The governing authority may establish an application fee to cover the cost in administering the program which must be paid at the time the owner applies for program approval. Applications should be processed by the governing authority within 90 days.

Conditional Certificate of Tax Exemption. If the application is approved a conditional certificate of tax exemption will be issued containing a statement that the applicant complies with the application requirements. If the application is denied the city must state in writing the reasons for denial and send the notice within ten days to the applicant's last known address. The applicant may appeal the decision within 30 days after receipt. The appeal must be based upon the record made before the city with the burden of proof on the applicant to show that there was no substantial evidence to support the city's decision. The decision of the city on the appeal is final.

Sales and Use Tax Deferral Certificate. A conditional recipient must submit an application to Department of Revenue (DOR) before initiation of construction of the investment project. The application must be made in a form and manner prescribed by DOR and include:

- a copy of the conditional certificate of program approval issued by the city;
- estimated construction costs;
- time schedules for completion and operation; and
- any other information required by DOR.

DOR must rule on the application within 60 days and provide information regarding documentation that must be retained in order to substantiate the amount of sales and use tax actually deferred. DOR may not accept applications for the deferral after June 30, 2034.

After receiving the conditional certificate of program approval and approval of an application by DOR, DOR must issue a sales and use tax deferral certificate for state and local sales and use taxes on eligible investment projects and keep a running total of all estimated sales and use tax deferrals provided each fiscal biennium. The deferral certificate is valid during active construction of a qualified investment project and expires on the day the city issues a certificate of occupancy for the investment project.

Certificate of Occupancy. Within 30 days of the issuance of a certificate of occupancy for an investment project the conditional recipient must file with the city:

- a description of the work completed and a statement that the eligible investment

- project qualifies the property for a sales and use tax deferral;
- a statement of the new affordable housing to be offered; and
- a statement that the work has been completed within three years of the conditional certificate of program approval.

Within 30 days of receipt the city must determine and notify the conditional recipient whether the investment project continues to qualify for the tax deferral.

If the city determines the investment project continues to qualify for the tax deferral, the conditional recipient must notify DOR within 30 days of receiving the city's determination report the project is operationally complete so DOR can certify the project and determine the qualifying deferred taxes. If DOR determines that purchases were not eligible for deferral it must assess interest, but not penalties, on the nonqualifying amounts.

The governing authority may extend the deadline for completion of the work for a period not to exceed 24 consecutive months if the city finds that the work was not completed within the required time period due to circumstances beyond the control of the conditional recipient and that the conditional recipient has been acting in good faith and with due diligence.

If a city denies a conditional recipient of a sales and use tax deferral they must notify DOR and taxes deferred are immediately due and payable, subject to any appeal by the conditional recipient. DOR must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The conditional recipient may file an appeal in superior court within 30 days of notification by the city to deny a deferral of sales and use taxes.

Cancellation or Transfer of an Exemption. The conditional recipient must notify the city and DOR within 60 days of a change in use or intended discontinuance with the requirements. If the city discovers that a portion of the property no longer meets the requirements, the city must notify DOR and all deferred sales and use taxes are immediately due and payable. DOR must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral.

Transfer of investment project ownership does not terminate the deferral if the successor meets the eligibility requirements. The transferor must notify the city and DOR of the transfer and the city must certify to DOR that the successor meets the requirements of the deferral. If the transferor fails to make the notification, all deferred sales and use taxes are immediately due and payable. DOR must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral.

Reporting. Thirty days after the issuance of the certificate of occupancy and each year thereafter for ten years, the conditional recipient must file:

- an annual report with the designated authorities representative of the city that

- includes: a statement of the affordable housing units constructed; a certification that the property has not changed use; a description of changes or improvements constructed after issuance of the certificate of occupancy; and any additional information requested by the city; and
- a complete annual tax performance report with DOR the year after the certificate of occupancy is issued and each year thereafter for ten years.

Beginning in 2025 any city issuing a certificate of program approval must report annually by December 31st to the Department of Commerce on the:

- number of program approval certificates granted;
- number and type of buildings converted and affordable housing units resulting from the conversion; and
- the estimated value of the sales and use tax deferral for each investment project and total estimated value of sales and use tax deferrals granted.

Multi-Family Property Tax Exemption. The sales and use tax deferral may be granted if the owner receives an MFTE for a conversion. For applicants receiving the MFTE, the required amount of affordable housing units under the sales and use tax deferral program is in addition to the amount of affordable housing units required under the property tax exemption.

Conversion means the conversion of a nonresidential building, in whole or in part, to multiple-unit housing.

Tax Preference Performance Statement. A tax preference performance statement specifies that the objective is to expand affordable housing options for very low to moderate-income households, specifically in urban areas where there is underutilized commercial property. JLARC must evaluate the number of increased housing units on underutilized commercial property and provide a report to the fiscal committees of the Legislature by December 31, 2032. If the review finds the number of affordable housing units has not increased, then the Legislature intends to repeal this tax preference.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: The goal of this bill is to leverage existing buildings to create more affordable units as quickly as possible. Lack of housing is not keeping up with the growth we are experiencing so we need every

tool to keep up with the housing needs in our area. This bill allows for tax exemption tools to incentivize these projects and will help ensure that they are adding affordable units to the marketplace. It advances equity by creating mixed income buildings providing a social benefit by having people with different lived experience living in the same place. When children grow up in mixed income communities and buildings their long term health is improved.

The residential to residential components of the bill allows affordability to be integrated into existing market rate buildings near job centers to address workforce shortage issues and prevent long commutes to work. Urbanized areas have limited land remaining for new construction. The public benefit for rent savings is greater than the exemption value. These incentives are only available through projects that are financed using government programs which have rigorous standards.

The second option incentivizes converting commercial to residential. Commercial real estate lives by a 5-7 year leasing cycle and many leases put in place before COVID will begin to terminate soon making a commercial cliff that threatens the viability of downtown areas. There is a lot of vacant space available now due to changes in the workforce which has made office space less desirable. Transitioning these buildings to residential is not easy from a construction standpoint and so the projects only move forward if the cost of the commercial building is at most equal to the cost of vacant land and framing.

Anytime you can convert existing buildings and keep them in active service is a good thing for sustainability. This has alignment with historic preservation by converting existing building that are attractive places to live. Would like consideration to include historic buildings in the buildings that qualify. Raising the area median income to align with the MFTE, including 80-115 percent AMI, would make this bill better.

OTHER: This as an additional tool to increase housing options. We have used similar programs such as the MFTE program to increase housing in our city and have had success in increasing the variety of housing in our city and increase the number of workforce housing in our city. The sales tax exemptions have also been very helpful to us. Would request adjusting the language to match the workforce housing 80-115 percent be part of this legislation because having more mixed income housing in the city would be helpful.

Persons Testifying (Housing): PRO: Senator Yasmin Trudeau, Prime Sponsor; Tim Cavanaugh, Urban Housing Ventures; Marc Angelillo, Urban Housing Ventures; Jonathan Bingle; CHRIS BATTEN, 135; Andrew Rolwes, Downtown Spokane Partnership; Angela Rozmyn, Natural and Built Environments; Briahna Murray, Urban Housing Ventures; Chris Moore, Washington Trust for Historic Preservation.

OTHER: Steven MacDonald, City of Spokane.

Persons Signed In To Testify But Not Testifying (Housing): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.*

PRO: Increasing the average median income eligibility from 80 to 115 percent to align with the multifamily property tax exemption would mean that more property owners and developers are able to participate, which means more supply and stabilized rents. While this is a meaningful step, following the 80 percent of average median income threshold will be challenging. Tax incentives like the ones in this bill support the building of new housing units in existing structures because conversions are challenging and expensive. New construction will take time to bring housing online, but this tax incentive will allow developers to provide additional housing faster. The option for converting existing residential buildings should be put back in the bill to further incentivize the development of affordable housing. The loss of state funds from this bill is made up by increases in other sources of revenue, such as the sales and real estate excise taxes.

Persons Testifying (Ways & Means): PRO: Andrew Rolwes, Downtown Spokane Partnership; CHRIS BATTEN, 135; Robert Pantley, Natural and Built Environments; Angela Rozmyn, Natural and Built Environments; Marc Angelillo, Urban Housing Ventures; Tim Cavanaugh, Urban Housing Ventures; McKenzie Darr, NAIOP-WA.

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