
SECOND SUBSTITUTE HOUSE BILL 2308

State of Washington

68th Legislature

2024 Regular Session

By House Finance (originally sponsored by Representatives Walen, Hutchins, Robertson, Santos, Barkis, and Shavers)

READ FIRST TIME 02/05/24.

1 AN ACT Relating to housing affordability tax incentives for
2 existing structures; adding a new chapter to Title 82 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that through tax
6 incentives, the private market can assist Washington in meeting its
7 housing goals, allowing the state to focus its resources on serving
8 households making below 50 percent of the area median income.
9 Furthermore, by providing adequate housing stock for households
10 making 50 to 80 percent of the area median income, those households
11 will not compete with persons in lower-income brackets for more
12 affordable units.

13 (2) The legislature also finds that constructing new housing
14 units can take years, and many existing buildings can be repurposed
15 quickly to meet the state's workforce and affordable housing needs.
16 Many existing buildings are located in downtown centers, near work
17 and services where there is limited land available for new
18 construction.

19 (3) The legislature finds that many downtown centers lack
20 available affordable housing, which results in long commutes that
21 increase greenhouse gas emissions. The legislature recognizes that by

1 using existing buildings to create affordable housing units, units
2 can be available more quickly and with a reduced impact on waste
3 streams and the environment compared to newly constructed units.

4 (4) It is the intent of the legislature to incentivize the
5 repurposing of existing buildings for workforce and affordable
6 housing by creating a property tax shift and a sales and use tax
7 remittance.

8 NEW SECTION. **Sec. 2.** The legislative authority of a city to
9 which this chapter applies may authorize a sales and use tax deferral
10 for commercial building conversions within the city if the
11 legislative authority of the city finds that the conversion fulfills
12 the requirements of this chapter. If a conditional recipient
13 maintains the property for qualifying purposes for at least 10 years,
14 deferred sales and use taxes need not be repaid.

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

18 (1) "Affordable housing" means:

19 (a) Residential rental housing that is rented by a person or
20 household whose monthly housing costs, including utilities other than
21 telephone, do not exceed 30 percent of the required household monthly
22 area median income to qualify as a low-income household under this
23 chapter; and

24 (b) Residential homeownership housing that is owned or occupied
25 by a low-income household whose monthly housing costs do not exceed
26 the percentage of family income that may be spent on monthly housing
27 costs, including utilities other than telephone, established by the
28 department of commerce.

29 (2) "Area median income" means:

30 (a) For an area within a standard metropolitan statistical area,
31 the area median income reported by the United States department of
32 housing and urban development for that standard metropolitan
33 statistical area; or

34 (b) For an area not within a standard metropolitan statistical
35 area, the county median income reported by the department of
36 commerce.

1 (3) "Governing authority" means the legislative authority of a
2 city having jurisdiction over the property for which a deferral may
3 be applied under this chapter.

4 (4) "Low-income household" means single persons, families, or
5 unrelated persons living together whose adjusted income is at or
6 below 80 percent of the median family income, adjusted for household
7 size for the county, city, or metropolitan statistical area where the
8 building is located as reported by the United States department of
9 housing and urban development.

10 (5) "Multiunit residential building" means a building permanently
11 affixed to the ground having four or more dwelling units not designed
12 or used as transient accommodations and not including hotels and
13 motels.

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

15 NEW SECTION. **Sec. 4.** A city governing authority may by
16 ordinance or resolution establish a state and local sales and use tax
17 deferral program for property owners for:

18 (1) The sale of or charge made for tangible personal property
19 incorporated as a component in a building that is converted from a
20 commercial building into affordable housing; and

21 (2) Labor and services rendered for the entire building during
22 the conversion of a commercial building into affordable housing.

23 NEW SECTION. **Sec. 5.** (1) An existing commercial building
24 conversion sales and use tax deferral program adopted by the
25 governing authority under this chapter must be amended to include
26 qualifying standards for affordable housing consistent with this
27 chapter.

28 (2) In order to qualify for a sales and use tax deferral for the
29 conversion of a commercial building to affordable housing under this
30 chapter, housing units must:

31 (a) Be in a building whose immediate prior use was predominantly
32 or exclusively for commercial use; and

33 (b) Have a complete project permit application submitted to the
34 city or county prior to January 1, 2029.

35 (3) The governing authority may request input from the Washington
36 housing finance commission and the department of commerce in
37 developing affordability requirements for units dedicated to
38 affordable housing.

1 (4) Except as provided in subsection (5) of this section, rent
2 levels for qualifying affordable housing units, including any
3 mandatory fees for tenant-paid utilities that are required as a
4 condition of tenancy, may not exceed 30 percent of the income limit
5 for the affordable housing unit.

6 (5) The governing authority may establish income or rent levels
7 other than those indicated in this chapter where it determines that
8 such an adjustment is needed to serve the needs of low-income
9 household affordable housing units in the community. The governing
10 authority must conduct public outreach to interested parties prior to
11 adopting a program with income or rent levels other than those
12 indicated under this chapter.

13 NEW SECTION. **Sec. 6.** To be eligible for the sales and use tax
14 deferral under this chapter, in addition to any other requirements in
15 this chapter, the commercial building conversion must be in
16 compliance with the following for the entire deferral period:

17 (1) A minimum of 20 percent of residential units in a multiunit
18 residential building subject to a tax deferral under this chapter
19 must be rented or sold as affordable housing units to low-income
20 households for a period no less than 10 years to address local market
21 conditions. Up to and including the midpoint, the percentage
22 requirement may be rounded down to the nearest whole number of units.

23 (2) Affordable housing units must be distributed throughout the
24 building and be comparable in terms of quality, living conditions,
25 size, and mix of unit types to market rate units in the building.

26 NEW SECTION. **Sec. 7.** An owner of the property must meet the
27 following requirements to receive a deferral under this chapter:

28 (1) Beginning January 1, 2025, the applicant must apply to the
29 city on forms adopted by the city. The application must contain the
30 following:

31 (a) Information setting forth grounds supporting the requested
32 deferral, including information indicated on the application form and
33 other requirements specified in the governing authority's adopted
34 deferral program;

35 (b) A description of the conversion, including the floor plan of
36 units and other information requested;

37 (c) A statement that the applicant is aware of the 10-year
38 affordability requirement under section 6 of this act;

1 (d) A statement that the applicant is aware of the potential tax
2 liability involved when the property ceases to be eligible for the
3 deferral provided under this chapter; and

4 (e) A certification of family size and annual income requirements
5 in a form acceptable to the city for designated affordable housing
6 units.

7 (2) The owner must apply on or before the application expiration
8 date of December 31, 2029.

9 (3) The applicant must verify the information provided in the
10 application by oath or affirmation.

11 NEW SECTION. **Sec. 8.** (1) The governing authority's designated
12 administrative official or agent may approve the application and
13 grant a conditional certificate of program approval if it finds that
14 the property and owner satisfy the requirements of this chapter and
15 its locally adopted program.

16 (2) Applications should be processed within 30 days of submittal.

17 (3) If the application is approved, the designated administrative
18 official or agent must issue the owner a conditional certificate of
19 program approval. The certificate must contain a statement by a duly
20 authorized administrative official of the governing authority that
21 the commercial conversion as described in the application will comply
22 with the required criteria of this chapter.

23 (4) If the application is denied, the designated administrative
24 official or agent must state in writing the reasons for denial and
25 issue notice to the applicant by regular or certified mail to the
26 applicant's last known address, or by other means reasonably
27 calculated to provide notice, within 10 days of the denial.

28 (5) An applicant may appeal the decision of the designated
29 administrative official or agent within 30 days after receipt. The
30 appeal must be based upon the record made before the administrative
31 official or agent, and the burden is on the applicant to show that
32 the decision is not supported by substantial evidence.

33 NEW SECTION. **Sec. 9.** (1) A conditional recipient must submit an
34 application to the department before initiation of the commercial
35 building conversion. The application must be made to the department
36 in a form and manner prescribed by the department. The application
37 must include a copy of the conditional certificate of program
38 approval issued by the city, estimated conversion costs, time

1 schedules for completion and operation, and any other information
2 required by the department. The department must rule on the
3 application within 30 days.

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

8 (3) The department may not accept applications for the deferral
9 after December 31, 2029.

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

12 NEW SECTION. **Sec. 10.** (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 taxes due
16 under chapters 82.08, 82.12, and 82.14 RCW on each eligible building
17 conversion.

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) The deferral certificate is valid during active construction
22 of a qualified commercial building conversion and expires at the end
23 of the 10-year affordability requirement under section 6 of this act
24 for a commercial building conversion for which a deferral certificate
25 was issued.

26 NEW SECTION. **Sec. 11.** (1) Transfer of investment project
27 ownership does not terminate the deferral. The deferral is
28 transferred subject to the successor meeting the eligibility
29 requirements of this chapter.

30 (2) The transferor of an eligible project must notify the city
31 and the department of such transfer. The city must certify to the
32 department that the successor meets the requirements of the deferral.
33 The transferor must provide the information necessary for the
34 department to transfer the deferral. If the transferor fails to
35 notify the city and the department, all deferred sales and use taxes
36 are immediately due and payable. The department must assess interest
37 at the rate provided for delinquent taxes and penalties retroactively
38 to the date of deferral.

1 NEW SECTION. **Sec. 12.** (1) Within 30 days of the end of the 10-
2 year affordability period required under section 6 of this act for an
3 eligible commercial building conversion, the conditional recipient
4 must file with the city the following:

5 (a) A description of the work that has been completed and a
6 statement that the eligible conversion qualifies the property for a
7 sales and use tax deferral under this chapter; and

8 (b) A statement of the affordable housing offered during the 10-
9 year affordability period as a result of the new construction.

10 (2) Within 30 days after receipt of the statements required under
11 subsection (1) of this section, the city must determine and notify
12 the conditional recipient as to whether the work completed and the
13 affordable housing offered are consistent with the application and
14 the contract approved by the city, and the conversion qualifies for a
15 tax deferral under this chapter. The conditional recipient must
16 notify the department within 30 days from receiving the city's
17 determination to schedule an audit of the deferred taxes. The
18 department must determine the amount of sales and use taxes
19 qualifying for the deferral. If the department determines that
20 purchases were not eligible for deferral it must assess interest, but
21 not penalties, on the nonqualifying amounts.

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

25 (a) The work was not constructed consistent with the application
26 or other applicable requirements;

27 (b) The affordable housing units offered for the 10-year
28 affordability period were not consistent with the application and
29 criteria of this chapter; or

30 (c) The owner's property is otherwise not qualified for a sales
31 and use tax deferral under this chapter.

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

1 (5) A city denying a conditional recipient of a sales and use tax
2 deferral under subsection (3) of this section must notify the
3 department and taxes deferred under this chapter are immediately due
4 and payable, subject to any appeal by the conditional recipient. The
5 department must assess interest at the rate provided for delinquent
6 taxes and penalties retroactively to the date of deferral. A debt for
7 deferred taxes will not be extinguished by insolvency or other
8 failure of the recipient.

9 NEW SECTION. **Sec. 13.** (1) During the 10-year affordability
10 period required under section 6 of this act, the owner receiving a
11 tax deferral under this chapter must obtain from each tenant living
12 in a designated affordable housing unit an annual certification of
13 family size and annual income in a form acceptable to the governing
14 authority.

15 (2) The owner must file an annual report with the governing
16 authority's designated administrative official or agent indicating
17 the following:

18 (a) Family size and annual income for each tenant living in a
19 designated affordable housing rental unit, and a statement that the
20 property is in compliance with affordable housing requirements
21 described in section 6 of this act;

22 (b) A statement of occupancy and vacancy;

23 (c) A schedule of rents charged in market rate units; and

24 (d) Any other information required by the city to determine
25 compliance with deferral requirements.

26 (3) The department must report annually the following
27 information:

28 (a) The number of sales and use tax deferral certificates
29 granted;

30 (b) The number and type of units in building properties receiving
31 a tax deferral;

32 (c) The number and type of units meeting affordable housing
33 requirements;

34 (d) The total monthly rent amount for each affordable and market
35 rate unit; and

36 (e) The dollar amount of the tax deferral issued for each
37 conversion and the total dollar amount of tax deferrals granted
38 within the city.

1 NEW SECTION. **Sec. 14.** If the owner intends to discontinue
2 compliance with the affordable housing requirements as described in
3 this chapter or any other condition to the deferral program, the
4 owner must notify tenants, the city, and the department 60 days
5 before the owner's discontinuance. If the city and the department are
6 notified by the owner, or if the city or department discover that the
7 building no longer meets the qualifications of the tax deferral, the
8 tax deferral is canceled and all deferred sales and use taxes are
9 immediately due and payable. The department must assess interest at
10 the rate provided for delinquent taxes and penalties retroactively to
11 the date of deferral. A debt for deferred taxes may not be
12 extinguished by insolvency or other failure of the recipient.

13 NEW SECTION. **Sec. 15.** If the owner intends to convert any
14 affordable housing rental units to market rate units after the 10-
15 year affordability period under section 6 of this act ends, the owner
16 must provide tenants of affordable housing rental units with
17 notification of intent to provide the tenant with rental relocation
18 assistance. The owner must provide tenant relocation assistance in an
19 amount equal to one month's rent to a low-income household within the
20 final month of the low-income household's lease. To be eligible for
21 tenant relocation assistance under this section, the tenant must
22 occupy an affordable housing unit at the time the 10-year
23 affordability requirement under section 6 of this act ends and must
24 qualify as a low-income household under this chapter at the time
25 relocation assistance is sought.

26 NEW SECTION. **Sec. 16.** (1) This section is the tax preference
27 performance statement for the tax preferences contained in
28 chapter . . . , Laws of 2024 (this act). This performance statement is
29 only intended to be used for subsequent evaluation of the tax
30 preference. It is not intended to create a private right of action by
31 any party or be used to determine eligibility for preferential tax
32 treatment.

33 (2) The legislature categorizes these tax preferences as ones
34 intended to induce certain designated behavior by taxpayers, as
35 indicated in RCW 82.32.808(2) (a).

36 (3) It is the legislature's specific public policy objective to
37 incentivize the repurposing of existing buildings for affordable
38 housing.

1 (4) It is the legislature's intent to provide a deferral from
2 sales and use taxes qualifying under chapter 82.--- RCW (the new
3 chapter created in section 17 of this act) for the conversion of
4 commercial buildings into affordable housing units for low-income
5 households.

6 (5) In order to obtain the data necessary to measure the
7 effectiveness of these tax preferences in achieving the public policy
8 objective described in this section, the joint legislative audit and
9 review committee may refer to any data collected by the state.

10 NEW SECTION. **Sec. 17.** Sections 1 through 15 of this act
11 constitute a new chapter in Title 82 RCW.

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