
SECOND SUBSTITUTE SENATE BILL 6175

State of Washington

68th Legislature

2024 Regular Session

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

READ FIRST TIME 02/05/24.

1 AN ACT Relating to providing a sales and use tax incentive for
2 existing structures; adding a new chapter to Title 82 RCW; and
3 providing expiration dates.

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

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

6 (1) Many cities in Washington are actively planning for growth
7 under the growth management act, chapter 36.70A RCW, and through tax
8 incentives, the private market can assist Washington in meeting its
9 housing goals;

10 (2) Many downtown centers lack available affordable housing,
11 which results in long commutes that increase greenhouse gas emissions
12 and by using existing buildings to create affordable housing units,
13 units can be available more quickly and with a reduced impact on
14 waste streams and the environment compared to newly constructed
15 units;

16 (3) The construction industry provides living wage jobs for
17 families across Washington;

18 (4) In the current economic climate, the creation of additional
19 affordable housing units is essential to the economic health of our
20 cities and our state;

1 (5) It is critical that Washington state promote its cities and
2 its property owners that will provide affordable housing;

3 (6) Constructing new housing units can take years, and many
4 existing buildings can be repurposed quickly to meet the state's
5 workforce and affordable housing needs;

6 (7) Many existing buildings are located in downtown centers, near
7 work and services where there is limited land available for new
8 construction;

9 (8) In downtowns across the state, there is a high level of open
10 commercial space, which will likely remain, due to changes in how
11 businesses use office space following the COVID-19 pandemic;

12 (9) A meaningful, fair, and predictable economic incentive should
13 be created to stimulate the redevelopment of underutilized commercial
14 property in targeted urban areas through a limited sales and use tax
15 deferral program as provided by this chapter; and

16 (10) This limited tax deferral will help the owners achieve the
17 highest and best use of land and enable cities to more fully realize
18 their planning goals.

19 NEW SECTION. **Sec. 2.** It is the purpose of this chapter to
20 encourage the redevelopment of underutilized commercial property in
21 targeted urban areas, thereby increasing affordable housing,
22 employment opportunities, and helping accomplish the other planning
23 goals of Washington cities. The legislative authorities of cities to
24 which this chapter applies may authorize a sales and use tax deferral
25 for an investment project within the city if the legislative
26 authority of the city finds that there are significant areas of
27 underutilized commercial property and a lack of affordable housing in
28 areas proximate to the land. If a conditional recipient maintains the
29 property for qualifying purposes for at least 10 years, deferred
30 sales and use taxes need not be repaid.

31 NEW SECTION. **Sec. 3.** The definitions in this section apply
32 throughout this chapter unless the context clearly requires
33 otherwise.

34 (1) "Affordable housing" means:

35 (a) Homeownership housing intended for owner occupancy to low or
36 moderate-income households whose monthly housing costs, including
37 utilities other than telephone, do not exceed 30 percent of the
38 household's monthly income;

1 (b) "Rental housing" for very low or low-income households whose
2 monthly housing costs, including utilities other than telephone, do
3 not exceed 30 percent of the household's monthly income.

4 (2) "Applicant" means an owner of commercial property.

5 (3) "City" means any city or town, including a code city.

6 (4) "Conditional recipient" means an owner of commercial property
7 granted a conditional certificate of program approval under this
8 chapter, which includes any successor owner of the property.

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

12 (6) "Eligible investment project" means an investment project
13 that is located in a city and receiving a conditional certificate of
14 program approval.

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

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

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

23 (10)(a) "Initiation of construction" means the date that a
24 building permit is issued under the building code adopted under RCW
25 19.27.031 for construction of the qualified building, if the
26 underlying ownership of the building vests exclusively with the
27 person receiving the economic benefit of the deferral.

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

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

34 (11) "Investment project" means an investment in multifamily
35 housing, including labor, services, and materials incorporated in the
36 planning, installation, and construction of the project. "Investment
37 project" includes investment in related facilities such as
38 playgrounds and sidewalks as well as facilities used for business use
39 for mixed-use development.

1 (12) "Low-income household" means a single person, family, or
2 unrelated persons living together whose adjusted income is more than
3 50 percent but is at or below 80 percent of the median family income
4 adjusted for family size, for the county, city, or metropolitan
5 statistical area, where the project is located, as reported by the
6 United States department of housing and urban development.

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

14 (14) "Multifamily housing" means a building or a group of
15 buildings having four or more dwelling units not designed or used as
16 transient accommodations and not including hotels and motels.
17 Multifamily units may result from rehabilitation or conversion of
18 vacant, underutilized, or substandard buildings to multifamily
19 housing.

20 (15) "Owner" means the property owner of record.

21 (16) "Underutilized commercial property" means property currently
22 used or intended to be used by a business for retailing or office-
23 related or administrative activities.

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

30 NEW SECTION. **Sec. 4.** (1) For the purpose of creating a sales
31 and use tax deferral program for conversion of a commercial building
32 to provide affordable housing under this chapter, the governing
33 authority must adopt a resolution of intention to create a sales and
34 use tax deferral program as generally described in the resolution.
35 The resolution must state the time and place of a hearing to be held
36 by the governing authority to consider the creation of the tax
37 deferral program and may include such other information pertaining to
38 the creation of the deferral program as the governing authority
39 determines to be appropriate to apprise the public of the action

1 intended. However, the resolution must provide information pertaining
2 to:

- 3 (a) The application process;
- 4 (b) The approval process;
- 5 (c) The appeals process for applications denied approval; and
- 6 (d) Additional requirements, conditions, and obligations that
7 must be followed postapproval of an application.

8 (2) The governing authority must give notice of a hearing held
9 under this chapter by publication of the notice once each week for
10 two consecutive weeks, not less than seven days, nor more than 30
11 days before the date of the hearing in a paper having a general
12 circulation in the city. The notice must state the time, date, place,
13 and purpose of the hearing.

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

16 NEW SECTION. **Sec. 5.** An owner of underutilized commercial
17 property seeking a sales and use tax deferral for conversion of a
18 commercial building to provide affordable housing under this chapter
19 on an investment project must complete the following procedures:

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

22 (a) Information setting forth the grounds supporting the
23 requested deferral including information indicated on the application
24 form or in the guidelines;

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

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

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

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

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

1 (g) 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 20 percent of the units as affordable housing to
17 very low, low, and moderate-income households. In a mixed use
18 project, only the ground floor of a building may be used for
19 commercial purposes with the remainder dedicated to multifamily
20 housing units;

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

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

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

31 (3) The investment project will occur on land that constitutes,
32 at the time of application, underutilized commercial property;

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

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

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

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

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

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

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

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

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

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

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

4 (b) A statement of the new affordable housing to be offered as a
5 result of the conversion of underutilized commercial property to
6 multifamily housing; and

7 (c) A statement that the work has been completed within three
8 years of the issuance of the conditional certificate of program
9 approval.

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 to be offered are consistent with the application
14 and the contract approved by the city, and the investment project
15 continues to qualify for a tax deferral under this chapter. The
16 conditional recipient must notify the department within 30 days from
17 receiving the city's determination to schedule an audit of the
18 deferred taxes. The department must determine the amount of sales and
19 use taxes qualifying for the deferral. If the department determines
20 that purchases were not eligible for deferral it must assess
21 interest, but 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 completed within three years of the
26 application date;

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

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

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

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

1 (5) The city's governing authority may enact an ordinance to
2 provide a process for a conditional recipient to appeal a decision by
3 the city that the conditional recipient is not entitled to a deferral
4 of sales and use taxes. The conditional recipient may appeal a
5 decision by the city to deny a deferral of sales and use taxes in
6 superior court under RCW 34.05.510 through 34.05.598, if the appeal
7 is filed within 30 days of notification by the city to the
8 conditional recipient.

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

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

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

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

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

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

29 (2) The conditional recipient of a deferral of taxes under this
30 chapter must file a complete annual tax performance report with the
31 department pursuant to RCW 82.32.534 beginning the year the
32 certificate of occupancy is issued and each year thereafter for 10
33 years.

34 (3) A city that issues a certificate of program approval under
35 this chapter must report annually by December 31st of each year,
36 beginning in 2025, to the department of commerce. The report must
37 include the following information:

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

39 (b) The total number and type of buildings converted;

1 (c) The number of affordable housing units resulting from the
2 conversion of underutilized commercial property to multifamily
3 housing; and

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

7 NEW SECTION. **Sec. 11.** (1) A conditional recipient must submit
8 an application to the department before initiation of the
9 construction of the investment project. In the case of an investment
10 project involving multiple qualified buildings, applications must be
11 made for, and before the initiation of construction of, each
12 qualified building. The application must be made to the department in
13 a form and manner prescribed by the department. The application must
14 include a copy of the conditional certificate of program approval
15 issued by the city, estimated construction costs, time schedules for
16 completion and operation, and any other information required by the
17 department. The department must rule on the application within 60
18 days.

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

23 (3) The department may not accept applications for the deferral
24 under this chapter after June 30, 2034.

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

27 (5) This section expires July 1, 2034.

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

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

37 (3) The deferral certificate is valid during active construction
38 of a qualified investment project and expires on the day the city

1 issues a certificate of occupancy for the investment project for
2 which a deferral certificate was issued.

3 (4) This section expires July 1, 2034.

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

8 (2) If, after the department has issued a sales and use tax
9 deferral certificate and the conditional recipient has received a
10 certificate of occupancy, the city finds that a portion of an
11 investment project is changed or will be changed to disqualify the
12 recipient for sales and use tax deferral eligibility under this
13 chapter, the city must notify the department and all deferred sales
14 and use taxes are immediately due and payable. The department must
15 assess interest at the rate provided for delinquent taxes and
16 penalties retroactively to the date of deferral. A debt for deferred
17 taxes will not be extinguished by insolvency or other failure of the
18 recipient.

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

21 NEW SECTION. **Sec. 14.** (1) Transfer of investment project
22 ownership does not terminate the deferral. The deferral is
23 transferred subject to the successor meeting the eligibility
24 requirements of this chapter.

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

34 NEW SECTION. **Sec. 15.** (1) This section is the tax preference
35 performance statement for the tax preference contained in
36 chapter . . . , Laws of 2024 (this act). This performance statement is
37 only intended to be used for subsequent evaluation of the tax

1 preference. It is not intended to create a private right of action by
2 any party or to be used to determine eligibility for preferential tax
3 treatment.

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

7 (3) It is the legislature's specific public policy objective to
8 expand affordable housing options for very low to moderate-income
9 households, specifically in urban areas where there is underutilized
10 commercial property.

11 (4) (a) To measure the effectiveness of the tax preference in this
12 act, the joint legislative audit and review committee must evaluate
13 the number of increased housing units on underutilized commercial
14 property. If a review finds that the number of affordable housing
15 units has not increased, then the legislature intends to repeal this
16 tax preference.

17 (b) The review must be provided to the fiscal committees of the
18 legislature by December 31, 2032.

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

23 NEW SECTION. **Sec. 16.** An owner of underutilized commercial
24 property claiming a sales and use tax deferral under this chapter may
25 also apply for the multiple-unit housing property tax exemption
26 program under chapter 84.14 RCW.

27 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
28 constitute a new chapter in Title 82 RCW.

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