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**HOUSE BILL 2881**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Frame, Tarleton, and Santos

AN ACT Relating to a property tax exemption for eligible commercial properties located within designated business districts; adding a new chapter to Title 84 RCW; creating new sections; prescribing penalties; and providing an expiration date.

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

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

(1) Qualified owners of small properties and their business tenants in commercially zoned communities within designated districts are likely to experience economic displacement as a result of market forces due to speculative development;

(2) A competitive "brick and mortar" retail sector is a necessary component of strong, thriving neighborhoods;

(3) Small businesses in commercially zoned neighborhoods should be able to thrive in areas where major infrastructure investments like transit, quality schools, and vital services like housing, arts and music, health care, and employment hubs are colocated;

(4) Rising property values are causing the displacement of small business tenants in commercial properties that supply the physical space to locate locally owned businesses that serve long-time community residents; and

(5) Communities need a wide range of local tools to create and maintain healthy, affordable small business communities and to provide local, affordable, and convenient access to essential commercial goods and services in business districts.

NEW SECTION. **Sec.**  The purpose of this chapter is to provide a property tax exemption for eligible commercial properties located within designated business districts that counties and cities have opted to promote in their communities. It is also the purpose of this chapter to encourage commercial opportunities that provide small business operators vitality and balance to address rising property values based on the highest and best use of the property, growing community needs, and financial challenges to small commercial properties.

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

(1) "Designated business district" means a district designated by the governing authority as a business district that it intends to promote for the benefit of the community.

(2) "Governing authority" means the local legislative authority of a city or county having jurisdiction over the property for which an exemption may be applied under this chapter.

(3) "Qualified owner" means the owner of a small property in the designated business district, whose gross revenues from active commercial operations on the property either directly, or due to tenant business, are within thresholds that the governing authority determines it wishes to preserve.

(4) "Quality standards" means requirements adopted by the governing authority, including requirements concerning the age of the building, the business district designation, evidence of existing commercial tenants, and any other requirements that the city or county determines are necessary.

(5) "Small properties" means properties, whether or not the properties are owner-occupied or commercial rentals, that are located in a designated district that is zoned as a neighborhood commercial district, or similarly zoned, of which the commercial component is comprised of less than fifty thousand square feet in area and contains significant improvements that are more than forty years old.

NEW SECTION. **Sec.**  (1) A city governing authority may, by ordinance or resolution, establish designated business district areas to promote small commercial properties that meet quality standards adopted by the city.

(2) A county governing authority may, by ordinance or resolution, establish a business district exemption area within unincorporated areas to promote small commercial properties that meet quality standards adopted by the county.

NEW SECTION. **Sec.**  (1) An exemption program adopted by the governing authority under this chapter must include qualifying standards for small commercial properties. Such standards may consider property tax savings to the property owner that are reflected in a triple net lease to tenants, tenant improvement or deferred maintenance support, or business-related assistance for the commercial tenant.

(2) In order to qualify for a property tax exemption under this chapter, small properties within the designated business district must:

(a) Be rented at established or below market rent levels that the governing authority determines are necessary to promote relevant community amenities; or

(b) Otherwise benefit directly from the net property tax savings resulting from this exemption. The direct benefit under this subsection (2)(b) must be determined based upon a demonstration by the applicant that the property's gross annual revenue is within thresholds that the governing authority determines are necessary to promote relevant community amenities.

NEW SECTION. **Sec.**  (1) The value of commercial improvements and land qualifying under this chapter is exempt from ad valorem property taxation for three successive years beginning January 1st of the year immediately following the calendar year that the certificate of tax exemption is filed with the county assessor in accordance with section 12 of this act. The exemption for qualifying properties may be renewed for successive three-year periods at the discretion of the governing authority.

(2) The exemption provided under this chapter is in addition to any tax credits, grants, or other incentives provided by law to increase affordability.

(3) The exemption in this chapter does not apply to any nonqualifying portions of a building or land.

(4) The governing authority must provide local taxing districts in the designated exemption area notice and an opportunity to be heard prior to establishing a commercial property affordability program under this chapter.

NEW SECTION. **Sec.**  To be eligible for the property tax exemption under this chapter, in addition to any other requirements in this chapter, the property must be in compliance with the following for the entire exemption period:

(1) The qualifying commercial space must be owner-occupied or occupied by a business tenant;

(2) The property may be part of a multiple use (e.g. commercial and residential) project, if a portion of the space in each building in the multiple use project is put to an eligible commercial use. If a building that is part of a multiple use project has dedicated less than one hundred percent of its total square footage to an eligible commercial use, only the portion of the land beneath the building footprint that is dedicated to an eligible commercial use is subject to the exemption under this chapter; and

(3) The property owner must enter into a contract with the city or county agreeing to terms and conditions required to satisfy eligibility criteria of the designated business district exemption program.

NEW SECTION. **Sec.**  (1) To be eligible for the exemption under this chapter, the property must also comply with all applicable land use regulations, zoning requirements, and building code requirements, including space and occupancy, structural, mechanical, fire, safety, and security standards; quality standards as defined in section 2 of this act; and qualifying standards established in section 5 of this act. The governing authority may establish additional standards to meet local needs.

(2) The property must be inspected for compliance with subsection (1) of this section prior to approval of the tax exemption application under this chapter, and must be inspected for compliance thereafter in a manner and frequency as established by the governing authority. The governing authority must deny an application for a tax exemption under this chapter for failure to comply with the requirements of subsection (1) of this section.

NEW SECTION. **Sec.**  (1) The governing authority may limit program participation to either, or both, of the following:

(a) Particular designated areas that present unique risks of displacement, or that provide unique opportunities near community infrastructure such as transportation; or

(b) Properties of a particular size that present a special antidisplacement opportunity for small or emerging businesses.

(2) The governing authority must adopt and implement standards to be utilized in considering applications and making the determinations required under this chapter. The standards must include:

(a) An application process and procedures;

(b) The requirements described in section 8 of this act;

(c) An inspection policy and procedures to determine whether the property complies with building and quality standards;

(d) Documentation submittal requirements necessary to establish annual gross revenues and other eligibility requirements; and

(e) Fees required of the applicant in order to process the application and monitor ongoing compliance with eligibility criteria. The fees must be commensurate with the cost anticipated by the governing authority to administer this chapter.

NEW SECTION. **Sec.**  (1) An owner of property who is applying for the exemption under this chapter must meet the following requirements:

(a) The applicant must apply to the city or county on forms adopted by the governing authority. The application must contain the following:

(i) Information setting forth the grounds supporting the requested exemption, including information indicated on the application form and other requirements specified in the governing authority's adopted exemption program;

(ii) A description of the project, including the floor plan and other information requested;

(iii) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter; and

(iv) A certification of annual gross revenue or rent requirements for the commercial space in a form acceptable to the governing authority.

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

(c) The applicant must submit a fee, if any, with the application as required under this chapter.

(2) The applicant should also provide an estimate of the anticipated tax savings from the exemption under this chapter and a description of how those tax savings will be passed on to tenants, as well as tenant acknowledgment and approval of how those tax savings will be passed on to the tenant.

NEW SECTION. **Sec.**  The governing authority may establish an application fee. This fee may not exceed an amount that the city or county determines is necessary to cover the cost likely to be incurred by the governing authority and the assessor in administering this chapter. The application fee must be paid at the time the application for exemption is filed. If the application is denied, the governing authority may retain that portion of the application fee attributable to its own administrative costs and refund the balance to the applicant.

NEW SECTION. **Sec.**  (1) The owner of rented commercial property receiving a tax exemption under this chapter must obtain from the tenant operating a business in the designated commercial space and submit to the city or county, an annual certification of occupancy and business operation in a form acceptable to the governing authority.

(2) The owner of property receiving a tax exemption under this chapter must submit to the city or county certification of its annual gross revenue from the property in a form acceptable to the governing authority.

(3) The owner of property receiving a tax exemption under this chapter must file an annual report with the governing authority's designated official indicating the following:

(a) Business tenant occupancy and operation of a business for each tenant, or for itself if the space is owner-occupied and operated, in a designated commercial space, and a statement that the property is in compliance with building code and quality requirements of this chapter;

(b) A statement of occupancy and vacancy;

(c) A schedule of rents charged, unless owner-occupied and operated, and adjustments reflecting property tax savings; and

(d) Any other information required by the city or county to determine compliance with program requirements.

(4) A governing authority that issues certificates of tax exemption under this chapter must report annually to the department of commerce the following information:

(a) The number of tax exemption certificates granted;

(b) The number of units in building properties receiving a tax exemption;

(c) The total monthly rent amount for each unit, if applicable, and any adjustments to reflect the tax savings resulting from the exemption; and

(d) The dollar amount of the tax exemption issued for each project and the total dollar amount of tax exemptions granted within the city or county.

NEW SECTION. **Sec.**  (1) Improvements and land exempted under this chapter continue to be exempted for the applicable period under section 6 of this act, if the improvements continue to satisfy all applicable conditions. If the owner intends to discontinue compliance with the requirements as described in section 6 of this act or any other condition to the exemption, the owner must notify the jurisdiction within sixty days of the owner's intended discontinuance. If the city or county is notified by the owner, or if the city or county discovers that a portion of the property no longer meets the qualifications of the city or county's exemption program, the tax exemption must be canceled, and the following must occur:

(a) Additional real property tax must be imposed on the property. This additional tax is the difference between the property tax paid and the property tax that would have been paid if the property had included the value of the nonqualifying improvements, for each of the prior three years during which the exemption was in effect;

(b) Additional interest is owed upon the amounts of the additional property tax at the same statutory rate charged on delinquent property taxes, calculated from the dates on which the additional tax would have been payable without the tax exemption;

(c) A penalty is owed in the amount equal to twenty percent of the additional property tax imposed under this section; and

(d) The additional tax, interest, and penalty are declared to be a lien on the real property and attach at the time the property or portion of the property is removed from the tax exemption program. The lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable, except that the lien is of equal rank with liens for amounts deferred under chapter 84.37 or 84.38 RCW. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(2) Upon a determination that a tax exemption is to be canceled for a reason stated in this section, the governing authority or authorized representative of the governing authority must notify the taxpayer shown by the tax rolls by certified mail of the determination to cancel the tax exemption. The owner may appeal the determination within thirty days of the date of the notice by filing a notice of appeal with the clerk of the governing authority, specifying the factual and legal basis upon which the determination of cancellation is alleged to be erroneous. The governing authority or its authorized agent may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. The burden is on the taxpayer to show that the governing authority's decision is not supported by substantial evidence. After the hearing, the decision maker must affirm, modify, or overturn the decision to cancel the tax exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court.

(3) The assessor must annually value the exempt and nonexempt portions of the property and improvements as necessary to permit the correction of the rolls in accordance with this section.

NEW SECTION. **Sec.**  This chapter expires January 1, 2031.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act constitute a new chapter in Title 84 RCW.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in chapter . . ., Laws of 2020 (this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

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

(3) It is the legislature's specific public policy objective to reduce economic displacement due to speculative development.

(4) If a review finds that less economic displacement occurs in designated business areas as compared to adjacent business areas, then the legislature intends to extend the expiration date of these tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.

NEW SECTION. **Sec.**  This act applies to taxes levied for collection in 2021 and thereafter.

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