

E2SSB 6175 - H COMM AMD
By Committee on Housing

ADOPTED 03/05/2024

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

14 (3) The construction industry provides living wage jobs for
15 families across Washington;

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

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

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

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

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

30 (9) A meaningful, fair, and predictable economic incentive should
31 be created to stimulate the redevelopment of underutilized commercial

1 property in targeted urban areas through a limited sales and use tax
2 deferral program as provided by this chapter; and

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

6 NEW SECTION. **Sec. 2.** It is the purpose of this chapter to
7 encourage the redevelopment of underutilized commercial property in
8 targeted urban areas, thereby increasing affordable housing,
9 employment opportunities, and helping accomplish the other planning
10 goals of Washington cities. The legislative authorities of cities to
11 which this chapter applies may authorize a sales and use tax deferral
12 for an investment project within the city if the legislative
13 authority of the city finds that there are significant areas of
14 underutilized commercial property and a lack of affordable housing in
15 areas proximate to the land. If a conditional recipient maintains the
16 property for qualifying purposes for at least 10 years, deferred
17 sales and use taxes need not be repaid.

18 NEW SECTION. **Sec. 3.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires
20 otherwise.

21 (1) "Affordable housing" means:

22 (a) Homeownership housing intended for owner occupancy to low-
23 income households whose monthly housing costs, including utilities
24 other than telephone, do not exceed 30 percent of the household's
25 monthly income;

26 (b) "Rental housing" for low-income households whose monthly
27 housing costs, including utilities other than telephone, do not
28 exceed 30 percent of the household's monthly income.

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

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

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

34 (5) "Eligible investment project" means an investment project
35 that is located in a city and receiving a conditional certificate of
36 program approval.

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

4 (7) "Household" means a single person, family, or unrelated
5 persons living together.

6 (8) (a) "Initiation of construction" means the date that a
7 building permit is issued under the building code adopted under RCW
8 19.27.031 for construction of the qualified building, if the
9 underlying ownership of the building vests exclusively with the
10 person receiving the economic benefit of the deferral.

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

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

17 (9) "Investment project" means an investment in multifamily
18 housing, including labor, services, and materials incorporated in the
19 planning, installation, and construction of the project. "Investment
20 project" includes investment in related facilities such as
21 playgrounds and sidewalks as well as facilities used for business use
22 for mixed-use development.

23 (10) "Low-income household" means a single person, family, or
24 unrelated persons living together whose adjusted income is at or
25 below 80 percent of the median family income adjusted for family
26 size, for the county, city, or metropolitan statistical area, where
27 the project is located, as reported by the United States department
28 of housing and urban development.

29 (11) "Multifamily housing" means a building or a group of
30 buildings having four or more dwelling units not designed or used as
31 transient accommodations and not including hotels and motels.
32 Multifamily units may result from rehabilitation or conversion of
33 vacant, underutilized, or substandard buildings to multifamily
34 housing.

35 (12) "Owner" means the property owner of record.

36 (13) "Underutilized commercial property" means an entire
37 property, or portion thereof, currently used or intended to be used
38 by a business for retailing or office-related or administrative
39 activities. If the property is used partly for a qualifying use and
40 partly for other purposes, the applicable tax deferral must be

1 determined by apportionment of the costs of construction under rules
2 adopted by the department. For the purposes of this subsection,
3 "qualifying use" means used or intended to be used by a business for
4 retailing or office-related or administrative activities.

5 NEW SECTION. **Sec. 4.** (1) For the purpose of creating a sales
6 and use tax deferral program for conversion of a commercial building
7 to provide affordable housing under this chapter, the governing
8 authority must adopt a resolution of intention to create a sales and
9 use tax deferral program as generally described in the resolution.
10 The resolution must state the time and place of a hearing to be held
11 by the governing authority to consider the creation of the tax
12 deferral program and may include such other information pertaining to
13 the creation of the deferral program as the governing authority
14 determines to be appropriate to apprise the public of the action
15 intended. However, the resolution must provide information pertaining
16 to:

- 17 (a) The application process;
18 (b) The approval process;
19 (c) The appeals process for applications denied approval; and
20 (d) Additional requirements, conditions, and obligations that
21 must be followed postapproval of an application.

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

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

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

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

- 36 (a) Information setting forth the grounds supporting the
37 requested deferral including information indicated on the application
38 form or in the guidelines;

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

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

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

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

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

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

18 (2) The applicant must verify the application by oath or
19 affirmation; and

20 (3) The application must be accompanied by the application fee,
21 if any, required under this chapter. The duly authorized
22 administrative official or committee of the city may permit the
23 applicant to revise an application before final action by the duly
24 authorized administrative official or committee of the city.

25 NEW SECTION. **Sec. 6.** The duly authorized administrative
26 official or committee of the city may approve the application and
27 grant a conditional certificate of program approval if it finds that:

28 (1)(a) The investment project is set aside primarily for
29 multifamily housing units and the applicant commits to renting or
30 selling at least 10 percent of the units as affordable housing to
31 low-income households. In a mixed use project, only the ground floor
32 of a building may be used for commercial purposes with the remainder
33 dedicated to multifamily housing units; and

34 (b) The applicant commits to any additional affordability and
35 income eligibility conditions adopted by the local government under
36 this chapter not otherwise inconsistent with this chapter;

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

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

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

5 (5) The terms and conditions of the implementation of the
6 development meets the requirements of this chapter and any
7 requirements of the city that are not otherwise inconsistent with
8 this chapter;

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

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

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

18 (2) If the application is approved, the city must issue the
19 applicant a conditional certificate of program approval. The
20 certificate must contain a statement by a duly authorized
21 administrative official of the governing authority that the
22 investment project as described in the application will comply with
23 the required criteria of this chapter.

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

28 (4) Upon denial by the city, an applicant may appeal the denial
29 to the city's governing authority or a city official designated by
30 the city to hear such appeals within 30 days after receipt of the
31 denial. The appeal before the city's governing authority or
32 designated city official must be based upon the record made before
33 the city with the burden of proof on the applicant to show that there
34 was no substantial evidence to support the city's decision. The
35 decision of the city on the appeal is final.

36 NEW SECTION. **Sec. 8.** The governing authority may establish an
37 application fee. This fee may not exceed an amount determined to be
38 required to cover the cost to be incurred by the governing authority

1 in administering the program under this chapter. The application fee
2 must be paid at the time the application for program approval is
3 filed.

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

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

10 (b) A statement of the new affordable housing to be offered as a
11 result of the conversion of underutilized commercial property to
12 multifamily housing; and

13 (c) A statement that the work has been completed within three
14 years of the issuance of the conditional certificate of program
15 approval.

16 (2) Within 30 days after receipt of the statements required under
17 subsection (1) of this section, the city must determine and notify
18 the conditional recipient as to whether the work completed and the
19 affordable housing to be offered are consistent with the application
20 and the contract approved by the city, and the investment project
21 continues to qualify for a tax deferral under this chapter. The
22 conditional recipient must notify the department within 30 days from
23 receiving the city's determination to report the project is
24 operationally complete so the department can certify the project and
25 determine the qualifying deferred taxes. The department must
26 determine the amount of sales and use taxes qualifying for the
27 deferral. If the department determines that purchases were not
28 eligible for deferral it must assess interest, but not penalties, on
29 the nonqualifying amounts.

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

33 (a) The work was not completed within three years of the
34 application date;

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

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

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

3 (4) If the city finds that the work was not completed within the
4 required time period due to circumstances beyond the control of the
5 conditional recipient and that the conditional recipient has been
6 acting and could reasonably be expected to act in good faith and with
7 due diligence, the governing authority may extend the deadline for
8 completion of the work for a period not to exceed 24 consecutive
9 months, and must notify the department of the extension.

10 (5) The city's governing authority may enact an ordinance to
11 provide a process for a conditional recipient to appeal a decision by
12 the city that the conditional recipient is not entitled to a deferral
13 of sales and use taxes. The conditional recipient may appeal a
14 decision by the city to deny a deferral of sales and use taxes in
15 superior court under RCW 34.05.510 through 34.05.598, if the appeal
16 is filed within 30 days of notification by the city to the
17 conditional recipient.

18 (6) A city denying a conditional recipient of a sales and use tax
19 deferral under subsection (3) of this section must notify the
20 department and taxes deferred under this chapter are immediately due
21 and payable, subject to any appeal by the conditional recipient. The
22 department must assess interest at the rate provided for delinquent
23 taxes, but not penalties, retroactively to the date of deferral. A
24 debt for deferred taxes will not be extinguished by insolvency or
25 other failure of the recipient.

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

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

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

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

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

38 (2) The conditional recipient of a deferral of taxes under this
39 chapter must file a complete annual tax performance report with the

1 department pursuant to RCW 82.32.534 beginning the year the
2 certificate of occupancy is issued and each year thereafter for 10
3 years.

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

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

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

10 (c) The number of affordable housing units resulting from the
11 conversion of underutilized commercial property to multifamily
12 housing; and

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

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

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

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

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

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

37 NEW SECTION. **Sec. 12.** (1) After receiving the conditional
38 certificate of program approval issued by the city and approval of an

1 application by the department as provided in section 11(1) of this
2 act, the department must issue a sales and use tax deferral
3 certificate for state and local sales and use taxes due under
4 chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible
5 investment project.

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

9 (3) The deferral certificate is valid during active construction
10 of a qualified investment project and expires on the day the city
11 issues a certificate of occupancy for the investment project for
12 which a deferral certificate was issued.

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

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

18 (2) If, after the department has issued a sales and use tax
19 deferral certificate and the conditional recipient has received a
20 certificate of occupancy, the city finds that a portion of an
21 investment project is changed or will be changed to disqualify the
22 recipient for sales and use tax deferral eligibility under this
23 chapter, the city must notify the department and all deferred sales
24 and use taxes are immediately due and payable. The department must
25 assess interest at the rate provided for delinquent taxes, but not
26 penalties, retroactively to the date of deferral. A debt for deferred
27 taxes will not be extinguished by insolvency or other failure of the
28 recipient.

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

31 NEW SECTION. **Sec. 14.** (1) Transfer of investment project
32 ownership does not terminate the deferral. The deferral is
33 transferred subject to the successor meeting the eligibility
34 requirements of this chapter.

35 (2) The transferor of an eligible project must notify the city
36 and the department of such transfer. The city must certify to the
37 department that the successor meets the requirements of the deferral.
38 The transferor must provide the information necessary for the

1 department to transfer the deferral. If the transferor fails to
2 notify the city and the department, all deferred sales and use taxes
3 are immediately due and payable. The department must assess interest
4 at the rate provided for delinquent taxes, but not penalties,
5 retroactively to the date of deferral.

6 NEW SECTION. **Sec. 15.** (1) This section is the tax preference
7 performance statement for the tax preference contained in
8 chapter . . . , Laws of 2024 (this act). This performance statement is
9 only intended to be used for subsequent evaluation of the tax
10 preference. It is not intended to create a private right of action by
11 any party or to be used to determine eligibility for preferential tax
12 treatment.

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

16 (3) It is the legislature's specific public policy objective to
17 expand affordable housing options for low-income households,
18 specifically in urban areas where there is underutilized commercial
19 property.

20 (4) (a) To measure the effectiveness of the tax preference in this
21 act, the joint legislative audit and review committee must evaluate
22 the number of increased housing units on underutilized commercial
23 property. If a review finds that the number of affordable housing
24 units has not increased, then the legislature intends to repeal this
25 tax preference.

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

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

32 NEW SECTION. **Sec. 16.** An owner of underutilized commercial
33 property claiming a sales and use tax deferral under this chapter may
34 also apply for the multiple-unit housing property tax exemption
35 program under chapter 84.14 RCW. For applicants receiving the
36 property tax exemption under chapter 84.14 RCW, the amount of
37 affordable housing units required for eligibility under this chapter
38 is in addition to the affordability conditions in chapter 84.14 RCW.

1 **Sec. 17.** RCW 84.14.010 and 2021 c 187 s 2 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Affordable housing" means residential housing that is rented
6 by a person or household whose monthly housing costs, including
7 utilities other than telephone, do not exceed thirty percent of the
8 household's monthly income. For the purposes of housing intended for
9 owner occupancy, "affordable housing" means residential housing that
10 is within the means of low or moderate-income households.

11 (2) "Campus facilities master plan" means the area that is
12 defined by the University of Washington as necessary for the future
13 growth and development of its campus facilities for campuses
14 authorized under RCW 28B.45.020.

15 (3) "City" means either (a) a city or town with a population of
16 at least fifteen thousand, (b) the largest city or town, if there is
17 no city or town with a population of at least fifteen thousand,
18 located in a county planning under the growth management act, (c) a
19 city or town with a population of at least five thousand located in a
20 county subject to the provisions of RCW 36.70A.215, or (d) any city
21 that otherwise does not meet the qualifications under (a) through (c)
22 of this subsection, until December 31, 2031, that complies with RCW
23 84.14.020(1)(a)(iii) or 84.14.021(1)(b).

24 (4) "Conversion" means the conversion of a nonresidential
25 building, in whole or in part, to multiple-unit housing under this
26 chapter.

27 (5) "County" means a county with an unincorporated population of
28 at least 170,000.

29 ~~((+5))~~ (6) "Governing authority" means the local legislative
30 authority of a city or a county having jurisdiction over the property
31 for which an exemption may be applied for under this chapter.

32 ~~((+6))~~ (7) "Growth management act" means chapter 36.70A RCW.

33 ~~((+7))~~ (8) "Household" means a single person, family, or
34 unrelated persons living together.

35 ~~((+8))~~ (9) "Low-income household" means a single person, family,
36 or unrelated persons living together whose adjusted income is at or
37 below eighty percent of the median family income adjusted for family
38 size, for the county, city, or metropolitan statistical area, where
39 the project is located, as reported by the United States department
40 of housing and urban development.

1 ~~((9))~~ (10) "Moderate-income household" means a single person,
2 family, or unrelated persons living together whose adjusted income is
3 more than eighty percent but is at or below one hundred fifteen
4 percent of the median family income adjusted for family size, for the
5 county, city, or metropolitan statistical area, where the project is
6 located, as reported by the United States department of housing and
7 urban development.

8 ~~((10))~~ (11) "Multiple-unit housing" means a building or a group
9 of buildings having four or more dwelling units not designed or used
10 as transient accommodations and not including hotels and motels.
11 Multifamily units may result from new construction or rehabilitated
12 or conversion of vacant, underutilized, or substandard buildings to
13 multifamily housing.

14 ~~((11))~~ (12) "Owner" means the property owner of record.

15 ~~((12))~~ (13) "Permanent residential occupancy" means multiunit
16 housing that provides either rental or owner occupancy on a
17 nontransient basis. This includes owner-occupied or rental
18 accommodation that is leased for a period of at least one month. This
19 excludes hotels and motels that predominately offer rental
20 accommodation on a daily or weekly basis.

21 ~~((13))~~ (14) "Rehabilitation improvements" means modifications
22 to existing structures, that are vacant for twelve months or longer,
23 that are made to achieve a condition of substantial compliance with
24 existing building codes or modification to existing occupied
25 structures which increase the number of multifamily housing units.

26 ~~((14))~~ (15) "Residential targeted area" means an area within an
27 urban center or urban growth area that has been designated by the
28 governing authority as a residential targeted area in accordance with
29 this chapter. With respect to designations after July 1, 2007,
30 "residential targeted area" may not include a campus facilities
31 master plan.

32 ~~((15))~~ (16) "Rural county" means a county with a population
33 between fifty thousand and seventy-one thousand and bordering Puget
34 Sound.

35 ~~((16))~~ (17) "Substantial compliance" means compliance with
36 local building or housing code requirements that are typically
37 required for rehabilitation as opposed to new construction.

38 ~~((17))~~ (18) "Urban center" means a compact identifiable
39 district where urban residents may obtain a variety of products and
40 services. An urban center must contain:

1 (a) Several existing or previous, or both, business
2 establishments that may include but are not limited to shops,
3 offices, banks, restaurants, governmental agencies;

4 (b) Adequate public facilities including streets, sidewalks,
5 lighting, transit, domestic water, and sanitary sewer systems; and

6 (c) A mixture of uses and activities that may include housing,
7 recreation, and cultural activities in association with either
8 commercial or office, or both, use.

9 NEW SECTION. **Sec. 18.** Sections 1 through 16 of this act
10 constitute a new chapter in Title 82 RCW."

11 Correct the title.

EFFECT: Removes the requirement that applicants commit to renting or selling at least 50 percent of the investment project set aside from multifamily housing units at or below fair market value.

Removes the definition of "county median price" and "fair market rent" from the bill.

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