SENATE BILL REPORT
SB 6175

As of February 1, 2024

Title: An act relating to housing affordability tax incentives for existing structures.

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

Sponsors: Senators Trudeau, Billig, Frame, Kuderer, Mullet, Nguyen, Nobles, Randall, Saldaña, Valdez and Wilson, C..

Brief History:
Committee Activity: Housing: 1/24/24, 1/26/24 [DPS-WM, w/oRec].
Ways & Means: 2/01/24.

Brief Summary of First Substitute Bill

- Authorizes a city governing authority to establish a new property tax exemption program for commercial buildings converted to provide affordable housing units for low-income households.
- Exempts, under certain conditions, the state retail sales and use tax for tangible personal property incorporated as a component of a conversion of a commercial building into affordable housing and labor and services rendered for the conversion.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 6175 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Cleveland, Saldaña, Shewmake and Trudeau.

Minority Report: That it be referred without recommendation.
Signed by Senators Braun and Gildon.

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

Staff: Melissa Van Gorkom (786-7491)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

Background: Property Tax. All real and personal property in the state is subject to property tax each year based on its value, unless a specific exemption is provided by law. There are numerous exemptions from property tax established either by statute or constitutionally. Exemptions include intangible property, churches, nonprofit hospitals, private schools and colleges, agricultural products, and affordable housing.

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

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

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

Tax Preference Performance Statement. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

Summary of Bill (First Substitute): Property Tax Exemption. A city governing authority may establish a new property tax exemption program for commercial buildings converted to provide affordable housing units for low-income households. Unless a different income or rent level is established by the governing authority, rent levels for qualifying affordable units, including any mandatory fees for tenant-paid utilities, may not exceed 30 percent of the income limit for the affordable housing unit.

To be eligible for the property tax exemption:
- housing units must be a building whose immediate prior use was predominantly or exclusively for commercial use and have a complete project permit application submitted to the county or city prior to January 1, 2029;
- the exemption is for 30 years beginning January 1st of the year immediately following the calendar year the exemption is filed with the county assessor;
- to be eligible the property must rent or sell 20 percent of residential units as affordable housing units to low-income households for a period of no less than 30 years; and
- affordable housing units must be distributed throughout the building and be comparable in terms of quality, living conditions, size, and mix of unit types to market rate units in the building for the entire exemption period.

The exemption may not be granted if the owner receives a multi-family property tax exemption. The exemption excludes the land and any nonhousing related improvements.

Application. To receive an exemption an owner of property must apply, on or before December 31, 2029, to the city on forms adopted by the city and verify the information provided in the application by oath or affirmation. The application must contain:
- information supporting the requested exemption;
- a floor plan of units and other information requested;
- a statement that the applicant is aware of potential tax liability involved when the property ceases to be eligible for the exemption; and
- a certification of family size and annual income requirements.

Applications should be processed by the governing authority within 30 days.

Certificate of Tax Exemption. If the application is approved, a conditional certificate of tax exemption will be issued containing a statement that the applicant complies with the application requirements. The city and applicant must enter into a contract stipulating a tax exemption will be provided if the applicant complies with the provisions outlined in the conditional certificate of tax exemption.

The applicant must submit information indicating compliance with the terms of the conditional certificate of tax exemption within two years of its issuance. The applicant can apply for a 12-month extension to receive a final certificate of tax exemption. Within 30 days of receipt of the statement, the governing authority must determine whether the affordability of units is consistent with the conditional tax exemption and, within ten days, either:

- file a final certificate of tax exemption with the county assessor if the affordability is consistent with the contract issued with the conditional certificate of tax exemption; or
- state in writing the reasons for denial and issue notice to the applicant's last known address by regular or certified mail or by other means reasonably calculated to provide notice.

The applicant may appeal the decision within 30 days after receipt.

The city must submit to the county assessor a single communication containing the list of all properties that have been issued a final certificate of tax exemption by August 1st the year preceding the effective date of the exemption.

Reporting. The owner receiving a tax exemption must obtain annual certification of family size and annual income from the tenant living in an affordable housing unit and report that information annually to the governing authority along with a statement of occupancy and vacancy and a schedule of rents charged in market rate units. The governing authority must report annually to the Department of Commerce and Department of Revenue (DOR) on the:

- number of tax exemption certificates granted;
- number and type of units in the building receiving a tax exemption or remittance;
- number and type of units meeting affordable housing requirements;
- total monthly rent amount for each affordable and market rate unit; and
- dollar amount of the tax exemption issued for each conversion and total tax exemptions granted within the city.

Cancelation of an Exemption. If the owner intends to discontinue compliance with the affordable housing requirements or any other conditions to the exemption, they must notify tenants and the jurisdiction 60 days prior to discontinuance. If the city is notified by the owner or discovers that a portion of the property no longer meets the qualifications, the tax exemption is canceled, and the following must occur:

- additional real property tax must be imposed on the property;
- additional interest is owed upon the amounts of the additional property tax at the same rate charged on delinquent property taxes, calculated from the dates on which the additional tax would have been payable without the tax exemption;
- a penalty is owed in the amount equal to 20 percent of the additional property tax imposed; and
- the additional tax, interest, and penalty are a lien on the real property and attach at the time property, or portion of the property is removed from exempt status.

Upon determination that a tax exemption is canceled, the governing authority must notify the taxpayer by certified mail, and the county assessor. The owner may appeal the determination within 30 days by filing a notice of appeal with the clerk of the governing authority. The governing authority may hear the appeal and the decision maker must affirm, modify, or overturn the decision to cancel the tax exemption based on the evidence received.

The governing authority must notify the county assessor of the final decision. The county assessor must annually value the exempt and nonexempt portion of the property and improvements as necessary to permit the correction of the tax rolls.

If the owner intends to convert any affordable housing rental units to market rate units before the 30 year exemption period or after the exemption ends, they must provide tenants with notification of intent to provide the tenant with rental relocation assistance in the amount equal to one month's rent within the final month of the low-income household's lease. To be eligible for assistance the tenant must occupy an affordable housing unit at the time the exemption expires and must qualify as a low-income household at the time relocation assistance is sought.

Sales and Use Tax Exemption. The retail sales and use tax does not apply to tangible personal property incorporated as a component of a conversion of a commercial building into affordable housing and labor and services rendered for the conversion.

A qualifying owner must rent or sell a minimum of 10 percent of residential units in a multiunit residential building to low-income households for at least ten years to claim the exemption. The exemption is in the form of a remittance for 100 percent of the state sales tax paid on qualifying purchases. Local sales and use taxes paid do not qualify for remittance. DOR will determine eligibility.

The owner receiving a tax exemption must obtain annual certification of family size and annual income from the tenant living in an affordable housing unit and report that information annually to DOR along with a statement of occupancy and vacancy and a schedule of rents charged in market rate units.

If the owner intends to discontinue compliance with affordable housing requirements or any other conditions to the exemption, they must notify DOR 60 days prior to discontinuance. If DOR discovers eligibility conditions for the exemption are no longer met or the annual certification is delinquent for more than 24 months, they must notify the owner within 60 days. The owner must pay total remittance granted under this section and an additional 20 percent of the total remittance granted as penalty.

The exemption expires December 31, 2029.

Tax Preference Performance Statement. A tax preference performance statement specifies that the exemption is intended to incentivize the repurposing of existing buildings for affordable housing. The JLARC review should consider, among other measures, the:

- total number of property tax exemptions granted and the value of those exemptions;
- total number of sales and use tax remittances granted and the value of those

remittances;
- total number and type of units meeting affordable housing requirements; and
- average monthly rent amount for affordable and market rate units.

The JLARC Review must be complete by December 31, 2028.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Removes authorization for a city governing authority to establish a new property tax exemption program for multiunit residential buildings converted to provide affordable housing units for low-income households.
- Requires the city submit a single communication containing a list of all properties that have been issued a final certificate of tax exemption to the county assessor by August 1st the year preceding the effective date of the exemption.
- Requires the owner to obtain annual certification of family size and income from each tenant living in a designated affordable housing unit and file an annual report with DOR for any sales and use tax exemption.
- Requires the governing authority that issues a certificate of exemption to report annually to DOR.
- Adds the number and type of units in building properties receiving a tax remittance to the information a governing authority must report on annually.
- Clarifies that the remittance of sales and use tax does not apply to local sales and use taxes paid.
- Requires DOR to notify the owner within 60 days if they discover that the annual certification is delinquent for more than 24 months.
- Adds metrics for JLARC to consider when conducting their review and requires the review to be complete by December 31, 2028.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: The goal of this bill is to leverage existing buildings to create more affordable units as quickly as possible. Lack of housing is not keeping up with the growth we are experiencing so we need every tool to keep up with the housing needs in our area. This bill allows for tax exemption tools to incentivize these projects and will help ensure that they are adding affordable units to the marketplace. It advances equity by creating mixed income buildings providing a social benefit by having people with different lived experience living in the same place. When children grow up in mixed income communities and buildings their long term health is improved.

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

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

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

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

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

OTHER: Steven MacDonald, City of Spokane.

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

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

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

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