

WSR 23-23-174

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 22, 2023, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-122.

Title of Rule and Other Identifying Information: Chapter 365-240 WAC, Affordable and supportive housing—Local sales and use tax. In response to SB 5604 (Laws of 2023), the department of commerce (department) is proposing amendments to WAC 365-240-020, and 365-240-030 to align with changes made to RCW 82.14.540.

Hearing Location(s): On January 4, 2024, at 11:00 a.m. This hearing will be held virtually using Microsoft Teams. Click here to join the meeting [contact agency for link], Meeting ID 230 676 738 118, Passcode adFK82. Call in option (audio only) +1 564-999-2000,,78111635# United States, Olympia, (833) 322-1218,,78111635# United States (Toll-free), Phone Conference ID 781 116 35#.

Date of Intended Adoption: January 24, 2024.

Submit Written Comments to: Kirsten Jewell, P.O. Box 42525, Olympia, WA 98504-2525, email Kirsten.jewell@commerce.wa.gov, by January 4, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Kirsten Jewell, phone 360-725-2723, email Kirsten.jewell@commerce.wa.gov, by December 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following amendments to chapter 365-240 WAC in order to align with SB 5604 (Laws of 2023):

- Removing the population size requirement from WAC 365-240-020;
- Adding the allowable use of administrative costs, which may not exceed 10 percent to WAC 365-240-020; and
- Adding the allowable use of administrative costs, which may not exceed 10 percent to WAC 365-240-030.

Reasons Supporting Proposal: The department supports this proposal because this rule making is necessary to provide transparency to local jurisdictions by aligning the language in RCW 82.14.540 with language found in chapter 365-240 WAC.

Statutory Authority for Adoption: RCW 82.14.540.

Statute Being Implemented: Chapter 82.14 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 564-669-4930; Implementation and Enforcement: Kirsten Jewell, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-725-2723.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:
Is fully exempt.

November 22, 2023
Amanda Hathaway
Rules Coordinator

OTS-5049.1

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-020 Authorized uses of tax revenue. ~~Counties ((with populations over four hundred thousand and cities with populations over one hundred thousand)) and cities~~ may use tax revenue for:

(1) Acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under RCW 71.24.385 (behavioral health organizations); ~~((~~or~~))~~

(2) Operations and maintenance costs of new units of affordable or supportive housing ~~((-~~

~~Counties with populations under four hundred thousand and cities with populations under one hundred thousand population may use tax revenue for the activities outlined above, as well as to provide rental assistance to tenants that are at or below sixty percent of the median income of the county or city that is imposing the tax));~~

(3) Providing rental assistance to tenants that are at or below 60 percent of the area median income of the county or city that is imposing the tax; or

(4) Administrative costs of the county or city associated with administering this section, which may not exceed 10 percent of the annual tax distributed to the jurisdiction under this section.

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-030 Annual report to the department of commerce.

Jurisdictions must submit a report to the department by October 1st annually with the following information pertaining to the most recent fiscal year. Reports submitted by a lead jurisdiction or managing en-

tity pursuant to an interlocal agreement must be accompanied by contract language designating the responsible entity for submitting annual reports and ensuring their accuracy.

The first report will be due October 1, 2020, and annually thereafter.

(1) General:

(a) All references made in this section to funds, funds pooled, or funds utilized or bonded against are in regard to those derived from a jurisdiction's affordable and supportive housing sales and use tax distribution from the department of revenue for the corresponding fiscal year.

(b) An annual report submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must be accompanied by agreed language designating it as the responsible party for report timeliness and accuracy.

(c) Information submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must include the total combined revenue collection and program activities for all jurisdictions subject to the agreement. A separate report on revenue collection and program activities must be submitted for each jurisdiction choosing to additionally expend funds outside the agreement, if applicable.

(d) All reports submitted pursuant to this section must include contact information for the preparer.

(2) Revenue collection:

(a) Total affordable and supportive housing sales and use tax distribution for the reporting jurisdiction(s);

(b) Applicable affordable housing and supportive housing sales and use tax rate(s) for the reporting jurisdiction(s);

(c) If an interlocal agreement is in place, the total revenue utilized jointly pursuant to the agreement;

(d) If an interlocal agreement is in place, the total revenue utilized by jurisdiction(s) separately, not according to the terms of the agreement.

(3) Program activities:

(a) Total funds committed;

(b) Number, types, and status of projects supported with funds;

(c) Degree of leverage with other public and private funds;

(d) Total funds utilized for rent assistance; and

(e) Duration of affordability for projects supported with funds.

(4) Program outputs:

(a) Total funds committed for loans and grants;

(b) Total funds obligated to support bonding activities;

(c) Total funds committed for operations and maintenance of new units of affordable or supportive housing;

(d) Total funds spent on administrative costs associated with administering this section, not to exceed 10 percent of the annual tax distributed to the jurisdiction;

(e) Total number of households served with funds used for rent assistance; and

~~((e))~~ (f) Target populations served with funds.