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**SUBSTITUTE SENATE BILL 5951**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Local Government (originally sponsored by Senators Braun, Takko, Palumbo, Short, Salomon, Zeiger, Rivers, Becker, Lovelett, Honeyford, and Wilson, L.)

AN ACT Relating to tax incentives to encourage residential and mixed-use development in urban infill areas; adding a new section to chapter 82.08 RCW; adding a new chapter to Title 84 RCW; and providing expiration dates.

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

NEW SECTION. **Sec.**  FINDINGS AND PURPOSE. (1) The legislature finds that certain urban communities have significant vacant land within city limits, which, for various reasons, has been passed over the normal course of urbanization. The legislature further finds that an increased emphasis on developing these passed-over parcels within developed areas, and on maximizing smart growth in areas that are already largely developed or have the potential to be transit-oriented and walkable, with convenient access to neighborhood schools, mixed-use and commercial development, and a range of employment and housing choices, provides a great public benefit to the citizens of Washington.

(2) Therefore, it is the intent of the legislature to establish a special property tax valuation incentive and sales tax incentive to encourage increased residential and mixed-use opportunities in the infill areas of urban centers of the state.

NEW SECTION. **Sec.**  TAX PREFERENCE PERFORMANCE STATEMENT. (1) This section is the tax preference performance statement for the tax preferences created in sections 4 and 16, chapter . . . , Laws of 2019 (sections 4 and 16 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference.

(2) The legislature categorizes this tax preference as one 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 incentivize property owners to develop residential and mixed-use properties for urban infill areas as provided in section 4 of this act. It is the legislature's intent to provide a property tax exemption and sales tax exemption that may be used to offset the costs of construction and rehabilitation for these types of properties.

(4) If the joint legislative audit and review committee finds that the property tax exemption and sales tax exemption has led to a significant increase in mixed-use and residential development in the urban infill areas of the state in the ten years following enactment of these tax preferences, then the legislature intends to extend the expiration dates of the 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 the reports required in section 12 of this act.

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

(1) "Affordable housing" means the sale or rental price of the dwelling unit is below the median sales or rental price of the urban area where the dwelling unit is located.

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

(3) "Infill development" means the development of vacant or under-used parcels within existing urban areas that are largely developed or have the potential to be developed.

(4) "Urban area" means urban growth area as defined in RCW 36.70A.110.

NEW SECTION. **Sec.**  EXEMPTION—DURATION—VALUATION. (1)(a) The value of new construction, conversion, and rehabilitation improvements in infill development areas, as designated by the governing authority of a city or county, is exempt from ad valorem property taxation for eight years, as follows:

(i) For construction, conversion, or rehabilitation of multifamily residential properties:

(A) In urban areas with a population of one hundred thousand or more, one hundred percent of the value of new construction, conversion, or rehabilitation, if the construction, conversion, or rehabilitation of the property results in the property attaining an urban density of one hundred fifty affordable housing units or more per acre;

(B) In urban areas with a population less than one hundred thousand but greater than fifty thousand, one hundred percent of the value of new construction, conversion, or rehabilitation, if the construction, conversion, or rehabilitation of the property results in the property attaining an urban density of seventy-five affordable housing units or more per acre; and

(C) In urban areas with a population of fifty thousand or less, one hundred percent of the value of new construction, conversion, or rehabilitation, if the construction, conversion, or rehabilitation of the property results in the property attaining an urban density of thirty-five affordable housing units or more per acre; and

(ii) For construction, conversion, or rehabilitation of mixed-use properties, seventy-five percent of the value of new construction, conversion, or rehabilitation. Mixed-use properties must provide for a minimum of fifty percent of the space for affordable housing units.

(b) The exemptions provided in (a)(i) and (ii) of this subsection do not include the value of land or unrelated improvements not qualifying under this chapter.

(2) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(3) This chapter does not apply to increases in assessed valuation made by the assessor or nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area to achieve the uniformity of assessment or appraisal required by law.

(4) At the conclusion of the exemption period, the new or rehabilitated construction cost must be considered as new construction for the purposes of chapter 84.55 RCW.

(5) This section expires January 1, 2030.

NEW SECTION. **Sec.**  APPLICATION—REQUIREMENTS. An owner of property applying for the exemption under this chapter must meet the following requirements:

(1) The new or rehabilitated property must be located within an infill development area as identified by the governing authority;

(2) The property must meet guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents or sale prices, and other adopted requirements indicated necessary by the city or county. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) New construction and rehabilitation improvements must be completed within three years from the date of approval of the application;

(4) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes. If the property proposed to be rehabilitated is not vacant, an applicant must provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(5) The applicant must enter into a contract with the city or county approved by the governing authority, or an administrative official or commission authorized by the governing authority, under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

NEW SECTION. **Sec.**  DESIGNATION OF INFILL DEVELOPMENT AREA. (1) The infill development area must be within an existing developed area or an area with potential to be developed, as determined by the governing authority, and would benefit from additional mixed-use development or residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the area.

(2) For the purpose of designating an infill development area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city or county where the proposed infill development area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as an infill development area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as an infill development area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of an infill development area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under section 8 of this act. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Requirements that address demolition of existing structures and site utilization; and

(c) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the infill development area in which they are to be located.

NEW SECTION. **Sec.**  APPLICATION PROCEDURES. An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner must secure from the governing authority or duly authorized representative, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated mixed-use development or multifamily housing, the owner must apply to the city or county on forms adopted by the governing authority. The application must contain the following:

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

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

(c) 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;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be accompanied by the application fee, if any, required under section 10 of this act. The governing authority may permit the applicant to revise an application before final action by the governing authority.

NEW SECTION. **Sec.**  APPROVAL—REQUIRED FINDINGS. The duly authorized administrative official or committee of the city or county may approve the application if it finds that:

(1) The proposed project meets the minimum requirements for the type of property development as provided in section 4 of this act;

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

(3) The owner has complied with all standards and guidelines adopted by the city or county under this chapter; and

(4) The site is located in an infill development area that has been designated by the governing authority in accordance with procedures and guidelines indicated in section 6 of this act.

NEW SECTION. **Sec.**  PROCESSING—APPROVAL—DENIAL—APPEAL. (1) The governing authority or an administrative official or commission authorized by the governing authority must approve or deny an application filed under this chapter within ninety days after receipt of the application.

(2) If the application is approved, the city or county must issue the owner of the property a conditional certificate of acceptance of tax exemption. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the property has complied with the required findings indicated in section 8 of this act.

(3) If the application is denied by the authorized administrative official or commission authorized by the governing authority, the deciding administrative official or commission must state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within ten days of the denial.

(4) Upon denial by a duly authorized administrative official or commission, an applicant may appeal the denial to the governing authority within thirty days after receipt of the denial. The appeal before the governing authority must be based upon the record made before the administrative official with the burden of proof on the applicant to show that there was no substantial evidence to support the administrative official's decision. The decision of the governing body in denying or approving the application is final.

NEW SECTION. **Sec.**  FEES. The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost 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 limited exemption is filed. If the application is approved, the governing authority shall pay the application fee to the county assessor for deposit in the county current expense fund, after first deducting that portion of the fee attributable to its own administrative costs in processing the application. 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.**  FILING REQUIREMENTS. (1) Upon completion of rehabilitation or new construction for which an application for a limited tax exemption under this chapter has been approved, the owner must file with the city or county the following:

(a) A statement of the amount of rehabilitation or construction expenditures made with respect to the property;

(b) A description of the work that has been completed and a statement that the rehabilitation improvements or new construction on the owner's property qualify the property for limited exemption under this chapter;

(c) If applicable, a statement that the project meets the specific development requirements in section 4 of this act; and

(d) A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption.

(2) Within thirty days after receipt of the statements required under subsection (1) of this section, the authorized representative of the city or county must determine whether the work completed is consistent with the application and the contract approved by the city or county and is qualified for a limited tax exemption under this chapter. The city or county must also determine which specific improvements completed meet the requirements and required findings.

(3) If the rehabilitation, conversion, or construction is completed within three years of the date the application for a limited tax exemption is filed under this chapter, or within an authorized extension of this time limit, and the authorized representative of the city or county determines that improvements were constructed consistent with the application and other applicable requirements, and the owner's property is qualified for a limited tax exemption under this chapter, the city or county must file the certificate of tax exemption with the county assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The authorized representative of the city or county must notify the applicant that a certificate of tax exemption is not going to be filed if the authorized representative determines that:

(a) The rehabilitation or new construction was not completed within three years of the application date, or within any authorized extension of the time limit;

(b) The improvements were not constructed consistent with the application or other applicable requirements;

(c) If applicable, the specific development requirements in section 4 of this act were not met; or

(d) The owner's property is otherwise not qualified for limited exemption under this chapter.

(5) If the authorized representative of the city or county finds that construction or rehabilitation of the property was not completed within the required time period due to circumstances beyond the control of the owner and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority or the city or county official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed twenty-four consecutive months.

(6) The governing authority may provide by ordinance for an appeal of a decision by the deciding officer or authority that an owner is not entitled to a certificate of tax exemption to the governing authority, a hearing examiner, or other city or county officer authorized by the governing authority to hear the appeal in accordance with such reasonable procedures and time periods as provided by ordinance of the governing authority. The owner may appeal a decision by the deciding officer or authority that is not subject to local appeal or a decision by the local appeal authority that the owner is not entitled to a certificate of tax exemption in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within thirty days of notification by the city or county to the owner of the decision being challenged.

NEW SECTION. **Sec.**  REPORT—FILING. (1) Thirty days after the anniversary of the date of the certificate of tax exemption and each year for the tax exemption period, the owner of the rehabilitated or newly constructed property must file with a designated authorized representative of the city or county an annual report indicating the following:

(a) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;

(b) A certification by the owner that the property has not changed use since the date of the certificate approved by the city or county;

(c) A description of changes or improvements constructed after issuance of the certificate of tax exemption; and

(d) Any additional information requested by the city or county.

(2) All cities or counties, which issue certificates of tax exemption under this chapter, must report annually by December 31st of each year, beginning in 2020, to the department of commerce. The report must include the following information:

(a) The number of tax exemption certificates granted;

(b) The total number and types of developments constructed or to be constructed;

(c) The actual development cost of each property;

(d) The total monthly rent or total sale amount of each unit produced; and

(e) The value of the tax exemption for each project receiving a tax exemption and the total value of tax exemptions granted.

NEW SECTION. **Sec.**  CANCELLATION OF EXEMPTION. (1) If improvements have been exempted under this chapter, the improvements continue to be exempted for the applicable period under section 4 of this act, so long as they are not converted to another use and continue to satisfy all applicable conditions. If the owner intends to convert the development to another use, or if applicable, if the owner intends to discontinue compliance with any other condition to exemption, the owner must notify the assessor within sixty days of the change in use or intended discontinuance. If, after a certificate of tax exemption has been filed with the county assessor, the authorized representative of the governing authority discovers that a portion of the property is changed or will be changed to a use that no longer meets the requirements, as previously approved or agreed upon by contract between the city or county and the owner, the tax exemption must be canceled and the following must occur:

(a) Additional real property tax must be imposed upon the value of the nonqualifying improvements in the amount that would normally be imposed, plus a penalty must be imposed amounting to twenty percent. This additional tax is calculated based upon the difference between the property tax paid and the property tax that would have been paid if it had included the value of the nonqualifying improvements dated back to the date that the improvements were converted to a nonapproved use;

(b) The tax must include interest upon the amounts of the additional tax at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the improvements had been assessed at a value without regard to this chapter; and

(c) The additional tax owed together with interest and penalty must become a lien on the land and attach at the time the property or portion of the property no longer meets applicable requirements, and 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. 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 must notify the record owner of the property as shown by the tax rolls by mail, return receipt requested, of the determination to cancel the exemption. The owner may appeal the determination to the governing authority or authorized representative, within thirty days by filing a notice of appeal with the clerk of the governing authority, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The governing authority or a hearing examiner or other official authorized by the governing authority may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. After the hearing, the deciding body or officer must either affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court under RCW 34.05.510 through 34.05.598.

(3) Upon determination by the governing authority or authorized representative to terminate an exemption, the county officials having possession of the assessment and tax rolls must correct the rolls in the manner provided for omitted property under RCW 84.40.080. The county assessor must make such a valuation of the property and improvements as is necessary to permit the correction of the rolls. The value of the new construction, conversion, and rehabilitation improvements added to the rolls is considered as new construction for the purposes of chapter 84.55 RCW. The owner may appeal the valuation to the county board of equalization under chapter 84.48 RCW and according to the provisions of RCW 84.40.038. If there has been a failure to comply with this chapter, the property must be listed as an omitted assessment for assessment years beginning January 1st of the calendar year in which the noncompliance first occurred, but the listing as an omitted assessment may not be for a period more than three calendar years preceding the year in which the failure to comply was discovered.

NEW SECTION. **Sec.**  GROWTH MANAGEMENT HEARINGS BOARD AND STATE ENVIRONMENTAL POLICY ACT REVIEW. (1) Any plans, development regulations, or amendments adopted by a city or county to implement this act are not subject to review under RCW 36.70A.280 until the next periodic update as required under RCW 36.70A.130.

(2) Any state environmental policy act decision, as referenced in chapter 43.21C RCW, that arises from subsection (1) of this section or qualified projects under section 8 of this act are not subject to appeal under RCW 43.21C.075.

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

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

(1)(a) The tax levied by RCW 82.08.020 does not apply to sales to a developer or property owner for the cost of labor for qualifying projects under section 8 of this act.

(b) Sellers making tax-exempt sales under this section must obtain from the purchaser an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(2) This section expires January 1, 2030.

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