
SUBSTITUTE SENATE BILL 5951

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.)

READ FIRST TIME 02/20/19.

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

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

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

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

1 NEW SECTION. **Sec. 2.** TAX PREFERENCE PERFORMANCE STATEMENT. (1)

2 This section is the tax preference performance statement for the tax
3 preferences created in sections 4 and 16, chapter . . . , Laws of
4 2019 (sections 4 and 16 of this act). This performance statement is
5 only intended to be used for subsequent evaluation of the tax
6 preference.

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

10 (3) It is the legislature's specific public policy objective to
11 incentivize property owners to develop residential and mixed-use
12 properties for urban infill areas as provided in section 4 of this
13 act. It is the legislature's intent to provide a property tax
14 exemption and sales tax exemption that may be used to offset the
15 costs of construction and rehabilitation for these types of
16 properties.

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

23 (5) In order to obtain the data necessary to perform the review
24 in subsection (4) of this section, the joint legislative audit and
25 review committee may refer to the reports required in section 12 of
26 this act.

27 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
28 section apply throughout this chapter unless the context clearly
29 requires otherwise.

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

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

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

1 (4) "Urban area" means urban growth area as defined in RCW
2 36.70A.110.

3 NEW SECTION. **Sec. 4.** EXEMPTION—DURATION—VALUATION. (1)(a) The
4 value of new construction, conversion, and rehabilitation
5 improvements in infill development areas, as designated by the
6 governing authority of a city or county, is exempt from ad valorem
7 property taxation for eight years, as follows:

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

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

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

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

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

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

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

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

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

10 (5) This section expires January 1, 2030.

11 NEW SECTION. **Sec. 5.** APPLICATION—REQUIREMENTS. An owner of
12 property applying for the exemption under this chapter must meet the
13 following requirements:

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

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

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

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

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

1 NEW SECTION. **Sec. 6.** DESIGNATION OF INFILL DEVELOPMENT AREA.

2 (1) The infill development area must be within an existing developed
3 area or an area with potential to be developed, as determined by the
4 governing authority, and would benefit from additional mixed-use
5 development or residential housing, including affordable housing, to
6 meet the needs of the public who would be likely to live in the area.

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

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

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

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

34 (a) Application process and procedures;

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

37 (c) Building requirements that may include elements addressing
38 parking, height, density, environmental impact, and compatibility
39 with the existing surrounding property and such other amenities as
40 will attract and keep permanent residents and that will properly

1 enhance the livability of the infill development area in which they
2 are to be located.

3 NEW SECTION. **Sec. 7.** APPLICATION PROCEDURES. An owner of
4 property seeking tax incentives under this chapter must complete the
5 following procedures:

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 8.** APPROVAL—REQUIRED FINDINGS. The duly
30 authorized administrative official or committee of the city or county
31 may approve the application if it finds that:

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

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

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

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

4 NEW SECTION. **Sec. 9.** PROCESSING—APPROVAL—DENIAL—APPEAL. (1)

5 The governing authority or an administrative official or commission
6 authorized by the governing authority must approve or deny an
7 application filed under this chapter within ninety days after receipt
8 of the application.

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

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

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

28 NEW SECTION. **Sec. 10.** FEES. The governing authority may

29 establish an application fee. This fee may not exceed an amount
30 determined to be required to cover the cost to be incurred by the
31 governing authority and the assessor in administering this chapter.
32 The application fee must be paid at the time the application for
33 limited exemption is filed. If the application is approved, the
34 governing authority shall pay the application fee to the county
35 assessor for deposit in the county current expense fund, after first
36 deducting that portion of the fee attributable to its own
37 administrative costs in processing the application. If the
38 application is denied, the governing authority may retain that

1 portion of the application fee attributable to its own administrative
2 costs and refund the balance to the applicant.

3 NEW SECTION. **Sec. 11.** FILING REQUIREMENTS. (1) Upon completion
4 of rehabilitation or new construction for which an application for a
5 limited tax exemption under this chapter has been approved, the owner
6 must file with the city or county the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 12.** REPORT—FILING. (1) Thirty days after the
33 anniversary of the date of the certificate of tax exemption and each
34 year for the tax exemption period, the owner of the rehabilitated or
35 newly constructed property must file with a designated authorized
36 representative of the city or county an annual report indicating the
37 following:

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

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

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

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

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

14 (a) The number of tax exemption certificates granted;

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

17 (c) The actual development cost of each property;

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

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

22 NEW SECTION. **Sec. 13.** CANCELLATION OF EXEMPTION. (1) If
23 improvements have been exempted under this chapter, the improvements
24 continue to be exempted for the applicable period under section 4 of
25 this act, so long as they are not converted to another use and
26 continue to satisfy all applicable conditions. If the owner intends
27 to convert the development to another use, or if applicable, if the
28 owner intends to discontinue compliance with any other condition to
29 exemption, the owner must notify the assessor within sixty days of
30 the change in use or intended discontinuance. If, after a certificate
31 of tax exemption has been filed with the county assessor, the
32 authorized representative of the governing authority discovers that a
33 portion of the property is changed or will be changed to a use that
34 no longer meets the requirements, as previously approved or agreed
35 upon by contract between the city or county and the owner, the tax
36 exemption must be canceled and the following must occur:

37 (a) Additional real property tax must be imposed upon the value
38 of the nonqualifying improvements in the amount that would normally
39 be imposed, plus a penalty must be imposed amounting to twenty

1 percent. This additional tax is calculated based upon the difference
2 between the property tax paid and the property tax that would have
3 been paid if it had included the value of the nonqualifying
4 improvements dated back to the date that the improvements were
5 converted to a nonapproved use;

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

11 (c) The additional tax owed together with interest and penalty
12 must become a lien on the land and attach at the time the property or
13 portion of the property no longer meets applicable requirements, and
14 has priority to and must be fully paid and satisfied before a
15 recognizance, mortgage, judgment, debt, obligation, or responsibility
16 to or with which the land may become charged or liable. The lien may
17 be foreclosed upon expiration of the same period after delinquency
18 and in the same manner provided by law for foreclosure of liens for
19 delinquent real property taxes. An additional tax unpaid on its due
20 date is delinquent. From the date of delinquency until paid, interest
21 must be charged at the same rate applied by law to delinquent ad
22 valorem property taxes.

23 (2) Upon a determination that a tax exemption is to be canceled
24 for a reason stated in this section, the governing authority or
25 authorized representative must notify the record owner of the
26 property as shown by the tax rolls by mail, return receipt requested,
27 of the determination to cancel the exemption. The owner may appeal
28 the determination to the governing authority or authorized
29 representative, within thirty days by filing a notice of appeal with
30 the clerk of the governing authority, which notice must specify the
31 factual and legal basis on which the determination of cancellation is
32 alleged to be erroneous. The governing authority or a hearing
33 examiner or other official authorized by the governing authority may
34 hear the appeal. At the hearing, all affected parties may be heard
35 and all competent evidence received. After the hearing, the deciding
36 body or officer must either affirm, modify, or repeal the decision of
37 cancellation of exemption based on the evidence received. An
38 aggrieved party may appeal the decision of the deciding body or
39 officer to the superior court under RCW 34.05.510 through 34.05.598.

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

18 NEW SECTION. **Sec. 14.** GROWTH MANAGEMENT HEARINGS BOARD AND
19 STATE ENVIRONMENTAL POLICY ACT REVIEW. (1) Any plans, development
20 regulations, or amendments adopted by a city or county to implement
21 this act are not subject to review under RCW 36.70A.280 until the
22 next periodic update as required under RCW 36.70A.130.

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

27 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act
28 constitute a new chapter in Title 84 RCW.

29 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.08
30 RCW to read as follows:

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

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

1 (2) This section expires January 1, 2030.

--- **END** ---