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**SUBSTITUTE SENATE BILL 5287**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Housing & Local Government (originally sponsored by Senators Das, Kuderer, Conway, Keiser, Liias, Nguyen, Nobles, Pedersen, Randall, Salomon, and Wilson, C.)

AN ACT Relating to affordable housing incentives; amending RCW 84.14.005, 84.14.010, 84.14.020, 84.14.040, and 84.14.100; adding a new section to chapter 84.14 RCW; creating a new section; and providing an expiration date.

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

**Sec.**  RCW 84.14.005 and 2007 c 430 s 1 are each amended to read as follows:

(1) The legislature finds:

((~~(1)~~)) (a) That in many of Washington's urban centers there is insufficient availability of desirable and convenient residential units, including affordable housing units, to meet the needs of a growing number of the public who would live in these urban centers if these desirable, convenient, attractive, affordable, and livable places to live were available;

((~~(2)~~)) (b) That the development of additional and desirable residential units, including affordable housing units, in these urban centers that will attract and maintain a significant increase in the number of permanent residents in these areas will help to alleviate the detrimental conditions and social liability that tend to exist in the absence of a viable mixed income residential population and will help to achieve the planning goals mandated by the growth management act under RCW 36.70A.020; and

((~~(3)~~)) (c) That planning solutions to solve the problems of urban sprawl often lack incentive and implementation techniques needed to encourage residential redevelopment in those urban centers lacking a sufficient variety of residential opportunities, and it is in the public interest and will benefit, provide, and promote the public health, safety, and welfare to stimulate new or enhanced residential opportunities, including affordable housing opportunities, within urban centers through a tax incentive as provided by this chapter.

(2) Therefore, the legislature intends to achieve multiple goals by incentivizing the development of multiple-unit housing including creating additional affordable housing, encouraging urban development and density, increasing market rate workforce housing, developing permanently affordable housing opportunities, promoting economic investment and recovery, and creating family-wage jobs.

**Sec.**  RCW 84.14.010 and 2017 c 52 s 16 are each amended to read as follows:

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

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

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

(3) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, ((~~or~~)) (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215, or (d) any city, until December 31, 2024, that complies with RCW 84.14.020(1)(a)(iii) and section 7(1)(b) of this act.

(4) "County" means a county with an unincorporated population of at least ((~~three hundred fifty thousand~~)) 170,000.

(5) "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.

(6) "Growth management act" means chapter 36.70A RCW.

(7) ((~~"High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.~~

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

((~~(9)~~)) (8) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development. ((~~For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.~~

~~(10)~~)) (9) "Moderate‑income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development. ((~~For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.~~

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 84.14.020 and 2020 c 237 s 2 are each amended to read as follows:

(1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows:

(i) For properties for which applications for certificates of tax exemption eligibility are submitted under this chapter before July 22, 2007, the value is exempt for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the certificate; ((~~and~~))

(ii) For properties for which applications for certificates of tax exemption eligibility are submitted under this chapter on or after July 22, 2007, the value is exempt:

(A) For eight successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate; or

(B) For twelve successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this subsection (1)(a)(ii)(B). For the property to qualify for the twelve-year exemption under this subsection, the applicant must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate‑income households, and the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(ii)(B) may be satisfied solely through housing affordable to moderate‑income households; and

(iii) Until December 31, 2024, for 12 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this subsection (1)(a)(iii). For the property to qualify for the 12-year exemption under this subsection, the applicant must commit to renting or selling at least 20 percent of the multifamily housing units as affordable housing units to low and moderate-income households, the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter, and the area must be zoned to have an average minimum density equivalent to 15 dwelling units or more per gross acre, or for cities with a population over 20,000, the area must be zoned to have an average minimum density equivalent to 25 dwelling units or more per gross acre. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(iii) may be satisfied solely through housing affordable to moderate-income households.

(b) The exemptions provided in (a)(i) ((~~and (ii)~~)) through (iii) of this subsection do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(c) For properties receiving an exemption as provided in (a)(ii)(B) of this subsection that are in compliance with existing contracts and where the certificate of tax exemption is set to expire after June 11, 2020, but before December 31, 2021, the exemption is extended until December 31, 2021, provided that the property must satisfy any eligibility criteria or limitations provided in this chapter as a condition to the existing exemption for a given property continue to be met. For all properties eligible to receive an extension pursuant to this subsection (1)(c), the city or county that issued the initial certificate of tax exemption, as required in RCW 84.14.090, must notify the county assessor and the applicant of the extension of the certificate of tax exemption.

(2) When a local government adopts guidelines pursuant to RCW 84.14.030(2) and includes conditions that must be satisfied with respect to individual dwelling units, rather than with respect to the multiple-unit housing as a whole or some minimum portion thereof, the exemption may, at the local government's discretion, be limited to the value of the qualifying improvements allocable to those dwelling units that meet the local guidelines.

(3) 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.

(4) This chapter does not apply to increases in assessed valuation made by the assessor on 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 of the county to achieve the uniformity of assessment or appraisal required by law.

(5) At the conclusion of the exemption period, the ((~~new or rehabilitated housing cost shall~~)) value of the new housing construction, conversion, or rehabilitation improvements must be considered as new construction for the purposes of ((~~chapter 84.55 RCW~~)) chapters 84.55 and 36.21 RCW as though the property was not exempt under this chapter, unless it qualifies for an extension as provided under subsection (6) of this section.

(6) For properties that qualified for, satisfied the conditions of, and utilized the exemption under subsection (1)(a)(ii)(A) or (B) of this section, following the initial exemption period or the extension period authorized in subsection (1)(c) of this section, the exemption period may be extended for projects that are within 18 months of expiration and are approved by the city or county. For the property to qualify for an extension under this subsection (6), the applicant must meet at a minimum the locally adopted requirements for the property to qualify for an exemption under subsection (1)(a)(ii)(B) of this section, and the applicant commits to renting or selling at least 20 percent of the multifamily housing units as affordable housing units for low-income households.

(7) At the end of both the tenth and eleventh years of an extension, for twelfth year extensions of the exemption, applicants must provide tenants of rent-restricted units with notification of intent to provide the tenant with an option in subsection (8) of this section.

(8) By three months before the expiration of any exemption provided under this section, the applicant must provide at least one of the following options to tenants of the affordable units that were required as a condition of receiving the exemption:

(a) Continue to provide an affordable rent as was required under the exemption for as long as the tenant continues to occupy the unit;

(b) Offer reasonable assistance in a tenant's relocation to a new dwelling unit. The reasonable assistance must be sufficient for the tenant to find another dwelling unit of equal size in a reasonably close geographic area;

(c) Rent increases of no more than five percent per year over the course of four years, if the tenant decides to continue to occupy the unit; or

(d) Convert the dwelling unit into a condominium and sell the dwelling unit to the tenant as affordable housing at a rate such that payments on a 30-year mortgage shall not exceed the ability to pay at the designated average median income for the size of the unit as required under this chapter.

(9) No new exemptions may be provided under this section beginning on or after January 1, 2032. No extensions may be granted under subsection (6) of this section on or after January 1, 2046.

**Sec.**  RCW 84.14.040 and 2014 c 96 s 4 are each amended to read as follows:

(1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available;

(c) The providing of additional housing opportunity, including affordable housing, in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter; and

(d) If the residential targeted area is designated by a county, the area must be located in an unincorporated area of the county that is within an urban growth area under RCW 36.70A.110 and the area must be: (i) In a rural county, served by a sewer system and designated by a county prior to January 1, 2013; or (ii) in a county that includes a campus of an institution of higher education, as defined in RCW 28B.92.030, where at least one thousand two hundred students live on campus during the academic year.

(2) For the purpose of designating a residential targeted 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 residential targeted 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 a residential targeted 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 a residential targeted 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 a residential targeted area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Income and rent standards for affordable units;

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

((~~(c)~~)) (d) 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 residential targeted area in which they are to be located.

(6)(a) The governing authority may adopt and implement, either as conditions to eight‑year exemptions or as conditions to an extended exemption period under RCW 84.14.020(1)(a)(ii)(B), or both, more stringent income eligibility, rent, or sale price limits, including limits that apply to a higher percentage of units, than the minimum conditions for an extended exemption period under RCW 84.14.020(1)(a)(ii)(B).

(b) Additionally, a governing authority may adopt and implement as a contractual prerequisite to any exemption granted pursuant to RCW 84.14.020:

(i) A requirement that applicants pay at least the prevailing rate of hourly wage established under chapter 39.12 RCW for journey level and apprentice workers on residential and commercial construction;

(ii) Payroll record requirements consistent with RCW 39.12.120(1);

(iii) Apprenticeship utilization requirements consistent with RCW 39.04.310; and

(iv) A contracting inclusion plan developed in consultation with the office of minority and women's business enterprises.

(7) For any multiunit housing located in an unincorporated area of a county, a property owner seeking tax incentives under this chapter must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households. In the case of multiunit housing intended exclusively for owner occupancy, the minimum requirement of this subsection ((~~(6)~~)) (7) may be satisfied solely through housing affordable to moderate-income households.

**Sec.**  RCW 84.14.100 and 2012 c 194 s 9 are each amended to read as follows:

(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 and, if applicable, that the property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 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 in regards to the units receiving a tax exemption.

(2) All cities or counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, must report annually by ((~~December 31st~~)) April 1st of each year, beginning in 2007, to the department of commerce. A city or county must be in compliance with the reporting requirements of this section to offer certificates of tax exemption for multiunit housing authorized in this chapter. The report must include the following information:

(a) The number of tax exemption certificates granted;

(b) The total number and type of units produced or to be produced;

(c) The number, size, and type of units produced or to be produced meeting affordable housing requirements;

(d) The actual development cost of each unit produced;

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

(f) The annual income and household size of each renter or owner household ((~~at the time of initial occupancy and the income of each initial purchaser of owner~~‑~~occupied units at the time of purchase~~)) for each of the units receiving a tax exemption and a summary of these figures for the city or county; and

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

(3) This section expires January 1, 2057.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in section 3, chapter . . ., Laws of 2021 (section 3 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones 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:

(a) Incentivize developers to construct or rehabilitate multifamily housing;

(b) Incentivize local governments and multifamily housing owners to maintain or expand existing income-restricted unit stock that have been incentivized through the tax exemption provided under chapter 84.14 RCW via new authority to renew the property tax abatement in exchange for continued or additional affordability; and

(c) Further encourage multifamily construction in cities and certain unincorporated urban growth areas by expanding access to the multifamily tax exemption program to a broader set of jurisdictions.

(4) It is the legislature's intent to provide the value of new housing construction, conversion, and rehabilitation improvements qualifying under chapter 84.14 RCW an exemption from ad valorem property taxation for eight to 12 years or more, as provided for in RCW 84.14.020, in order to provide incentives to developers to construct or rehabilitate multifamily housing thereby increasing the number of affordable housing units, or preserving the state's stock of income-restricted units, for low-income to moderate-income residents in certain urban growth areas.

(5) The legislature intends to extend the expiration date of the tax preferences in section 3, chapter . . ., Laws of 2021 (section 3 of this act), if a review finds that:

(a) Projects receiving an initial eight-year or 12-year exemption regularly enter into subsequent 12-year extensions in exchange for continued or increased income restrictions on affordable units; and

(b) At least 20 percent of the new housing is developed and occupied by households earning:

(i) At or below 80 percent of the area median income, at the time of occupancy, adjusted for family size for the county in which the project is located; or

(ii) Where the housing is intended exclusively for owner occupancy, up to 115 percent of the area median income, at the time of sale, adjusted for family size for the county in which the project is located.

(6) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee must refer to the annual reports compiled by the department of commerce under RCW 84.14.100 and may refer to data provided by counties or cities in which persons are utilizing the preferences, the office of financial management, the department of commerce, the United States department of housing and urban development, and any other data sources, as needed by the joint legislative audit and review committee.

NEW SECTION. **Sec.**  A new section is added to chapter 84.14 RCW to read as follows:

(1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows: For 20 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this section. For the property to qualify for the 20-year exemption under this section, at least 25 percent of the units must be sold to a qualified nonprofit or local government partner that will assure permanent affordable homeownership. The remaining 75 percent of units may be rented or sold at market rates.

(b) Until December 31, 2024, in any city the value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows: For 20 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this section. For the property to qualify for the 20-year exemption under this section, at least 25 percent of the units must be sold to a qualified nonprofit or local government partner that will assure permanent affordable homeownership. The remaining 75 percent of units may be rented or sold at market rates. The area must be zoned to have an average minimum density equivalent to 15 dwelling units or more per gross acre, or for cities with a population over 20,000, the area must be zoned to have an average minimum density equivalent to 25 dwelling units or more per gross acre.

(2) Permanently affordable homeownership units or permanently affordable rental units must be sold or rented to households earning no more than 80 percent of the average median income for the city or local jurisdiction in which the unit is located.

(3) A local jurisdiction may assign and collect an administration fee at each point of sale to cover the administrative costs for oversight of the program to maintain permanently affordable housing units consistent with this section.

(4) The exemptions in this section do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(5) For purposes of this section:

(a) "Permanently affordable homeownership" means homeownership that, in addition to meeting the definition of "affordable housing" in RCW 43.185A.010, is:

(i) Sponsored by a nonprofit organization or governmental entity;

(ii) Subject to a ground lease or deed restriction that includes:

(A) A resale restriction designed to provide affordability for future low and moderate-income homebuyers;

(B) A right of first refusal for the sponsor organization to purchase the home at resale; and

(C) A requirement that the sponsor must approve any refinancing, including home equity lines of credit.

(iii) Sponsored by a nonprofit organization or governmental entity and the sponsor organization:

(A) Executes a new ground lease or deed restriction with a duration of at least 99 years at the initial sale and with each successive sale; and

(B) Supports homeowners and enforces the ground lease or deed restriction.

(b) "Permanently affordable rental" means a rental unit that is owned and managed by a housing authority, or nonprofit or local governmental agency for the purpose of ensuring affordable housing, with income restrictions that meet or exceed the requirements of this chapter.

(6) The department of commerce must develop a template for permanent affordability for home or condo ownership through deed restrictions that can be used by a city or local government to ensure compliance with this section.

**--- END ---**