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**SECOND SUBSTITUTE HOUSE BILL 2308**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Finance (originally sponsored by Representatives Walen, Hutchins, Robertson, Santos, Barkis, and Shavers)

AN ACT Relating to housing affordability tax incentives for existing structures; adding a new chapter to Title 82 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that through tax incentives, the private market can assist Washington in meeting its housing goals, allowing the state to focus its resources on serving households making below 50 percent of the area median income. Furthermore, by providing adequate housing stock for households making 50 to 80 percent of the area median income, those households will not compete with persons in lower-income brackets for more affordable units.

(2) The legislature also finds that constructing new housing units can take years, and many existing buildings can be repurposed quickly to meet the state's workforce and affordable housing needs. Many existing buildings are located in downtown centers, near work and services where there is limited land available for new construction.

(3) The legislature finds that many downtown centers lack available affordable housing, which results in long commutes that increase greenhouse gas emissions. The legislature recognizes that by using existing buildings to create affordable housing units, units can be available more quickly and with a reduced impact on waste streams and the environment compared to newly constructed units.

(4) It is the intent of the legislature to incentivize the repurposing of existing buildings for workforce and affordable housing by creating a property tax shift and a sales and use tax remittance.

NEW SECTION. **Sec.**  The legislative authority of a city to which this chapter applies may authorize a sales and use tax deferral for commercial building conversions within the city if the legislative authority of the city finds that the conversion fulfills the requirements of this chapter. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid.

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

(1) "Affordable housing" means:

(a) Residential rental housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the required household monthly area median income to qualify as a low-income household under this chapter; and

(b) Residential homeownership housing that is owned or occupied by a low-income household whose monthly housing costs do not exceed the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, established by the department of commerce.

(2) "Area median income" means:

(a) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or

(b) For an area not within a standard metropolitan statistical area, the county median income reported by the department of commerce.

(3) "Governing authority" means the legislative authority of a city having jurisdiction over the property for which a deferral may be applied under this chapter.

(4) "Low-income household" means single persons, families, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income, adjusted for household size for the county, city, or metropolitan statistical area where the building is located as reported by the United States department of housing and urban development.

(5) "Multiunit residential building" means a building permanently affixed to the ground having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels.

(6) "Owner" means the property owner of record.

NEW SECTION. **Sec.**  A city governing authority may by ordinance or resolution establish a state and local sales and use tax deferral program for property owners for:

(1) The sale of or charge made for tangible personal property incorporated as a component in a building that is converted from a commercial building into affordable housing; and

(2) Labor and services rendered for the entire building during the conversion of a commercial building into affordable housing.

NEW SECTION. **Sec.**  (1) An existing commercial building conversion sales and use tax deferral program adopted by the governing authority under this chapter must be amended to include qualifying standards for affordable housing consistent with this chapter.

(2) In order to qualify for a sales and use tax deferral for the conversion of a commercial building to affordable housing under this chapter, housing units must:

(a) Be in a building whose immediate prior use was predominantly or exclusively for commercial use; and

(b) Have a complete project permit application submitted to the city or county prior to January 1, 2029.

(3) The governing authority may request input from the Washington housing finance commission and the department of commerce in developing affordability requirements for units dedicated to affordable housing.

(4) Except as provided in subsection (5) of this section, rent levels for qualifying affordable housing units, including any mandatory fees for tenant-paid utilities that are required as a condition of tenancy, may not exceed 30 percent of the income limit for the affordable housing unit.

(5) The governing authority may establish income or rent levels other than those indicated in this chapter where it determines that such an adjustment is needed to serve the needs of low-income household affordable housing units in the community. The governing authority must conduct public outreach to interested parties prior to adopting a program with income or rent levels other than those indicated under this chapter.

NEW SECTION. **Sec.**  To be eligible for the sales and use tax deferral under this chapter, in addition to any other requirements in this chapter, the commercial building conversion must be in compliance with the following for the entire deferral period:

(1) A minimum of 20 percent of residential units in a multiunit residential building subject to a tax deferral under this chapter must be rented or sold as affordable housing units to low-income households for a period no less than 10 years to address local market conditions. Up to and including the midpoint, the percentage requirement may be rounded down to the nearest whole number of units.

(2) Affordable housing units must be distributed throughout the building and be comparable in terms of quality, living conditions, size, and mix of unit types to market rate units in the building.

NEW SECTION. **Sec.**  An owner of the property must meet the following requirements to receive a deferral under this chapter:

(1) Beginning January 1, 2025, the applicant must apply to the city on forms adopted by the city. The application must contain the following:

(a) Information setting forth grounds supporting the requested deferral, including information indicated on the application form and other requirements specified in the governing authority's adopted deferral program;

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

(c) A statement that the applicant is aware of the 10-year affordability requirement under section 6 of this act;

(d) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the deferral provided under this chapter; and

(e) A certification of family size and annual income requirements in a form acceptable to the city for designated affordable housing units.

(2) The owner must apply on or before the application expiration date of December 31, 2029.

(3) The applicant must verify the information provided in the application by oath or affirmation.

NEW SECTION. **Sec.**  (1) The governing authority's designated administrative official or agent may approve the application and grant a conditional certificate of program approval if it finds that the property and owner satisfy the requirements of this chapter and its locally adopted program.

(2) Applications should be processed within 30 days of submittal.

(3) If the application is approved, the designated administrative official or agent must issue the owner a conditional certificate of program approval. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the commercial conversion as described in the application will comply with the required criteria of this chapter.

(4) If the application is denied, the designated administrative official or agent must state in writing the reasons for denial and issue notice to the applicant by regular or certified mail to the applicant's last known address, or by other means reasonably calculated to provide notice, within 10 days of the denial.

(5) An applicant may appeal the decision of the designated administrative official or agent within 30 days after receipt. The appeal must be based upon the record made before the administrative official or agent, and the burden is on the applicant to show that the decision is not supported by substantial evidence.

NEW SECTION. **Sec.**  (1) A conditional recipient must submit an application to the department before initiation of the commercial building conversion. The application must be made to the department in a form and manner prescribed by the department. The application must include a copy of the conditional certificate of program approval issued by the city, estimated conversion costs, time schedules for completion and operation, and any other information required by the department. The department must rule on the application within 30 days.

(2) The department must provide information to the conditional recipient regarding documentation that must be retained by the conditional recipient in order to substantiate the amount of sales and use tax actually deferred under this chapter.

(3) The department may not accept applications for the deferral after December 31, 2029.

(4) The application must include a waiver by the conditional recipient of the four-year limitation under RCW 82.32.100.

NEW SECTION. **Sec.**  (1) After receiving the conditional certificate of program approval issued by the city and provided to the department by the applicant, the department must issue a sales and use tax deferral certificate for state and local sales taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible building conversion.

(2) The department must keep a running total of all estimated sales and use tax deferrals provided under this chapter during each fiscal biennium.

(3) The deferral certificate is valid during active construction of a qualified commercial building conversion and expires at the end of the 10-year affordability requirement under section 6 of this act for a commercial building conversion for which a deferral certificate was issued.

NEW SECTION. **Sec.**  (1) Transfer of investment project ownership does not terminate the deferral. The deferral is transferred subject to the successor meeting the eligibility requirements of this chapter.

(2) The transferor of an eligible project must notify the city and the department of such transfer. The city must certify to the department that the successor meets the requirements of the deferral. The transferor must provide the information necessary for the department to transfer the deferral. If the transferor fails to notify the city and the department, all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral.

NEW SECTION. **Sec.**  (1) Within 30 days of the end of the 10-year affordability period required under section 6 of this act for an eligible commercial building conversion, the conditional recipient must file with the city the following:

(a) A description of the work that has been completed and a statement that the eligible conversion qualifies the property for a sales and use tax deferral under this chapter; and

(b) A statement of the affordable housing offered during the 10-year affordability period as a result of the new construction.

(2) Within 30 days after receipt of the statements required under subsection (1) of this section, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing offered are consistent with the application and the contract approved by the city, and the conversion qualifies for a tax deferral under this chapter. The conditional recipient must notify the department within 30 days from receiving the city's determination to schedule an audit of the deferred taxes. The department must determine the amount of sales and use taxes qualifying for the deferral. If the department determines that purchases were not eligible for deferral it must assess interest, but not penalties, on the nonqualifying amounts.

(3) The city must notify the conditional recipient within 30 days that a tax deferral under this chapter is denied if the city determines that:

(a) The work was not constructed consistent with the application or other applicable requirements;

(b) The affordable housing units offered for the 10-year affordability period were not consistent with the application and criteria of this chapter; or

(c) The owner's property is otherwise not qualified for a sales and use tax deferral under this chapter.

(4) The city's governing authority may enact an ordinance to provide a process for a conditional recipient to appeal a decision by the city that the conditional recipient is not entitled to a deferral of sales and use taxes. The conditional recipient may appeal a decision by the city to deny a deferral of sales and use taxes in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within 30 days of notification by the city to the conditional recipient.

(5) A city denying a conditional recipient of a sales and use tax deferral under subsection (3) of this section must notify the department and taxes deferred under this chapter are immediately due and payable, subject to any appeal by the conditional recipient. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

NEW SECTION. **Sec.**  (1) During the 10-year affordability period required under section 6 of this act, the owner receiving a tax deferral under this chapter must obtain from each tenant living in a designated affordable housing unit an annual certification of family size and annual income in a form acceptable to the governing authority.

(2) The owner must file an annual report with the governing authority's designated administrative official or agent indicating the following:

(a) Family size and annual income for each tenant living in a designated affordable housing rental unit, and a statement that the property is in compliance with affordable housing requirements described in section 6 of this act;

(b) A statement of occupancy and vacancy;

(c) A schedule of rents charged in market rate units; and

(d) Any other information required by the city to determine compliance with deferral requirements.

(3) The department must report annually the following information:

(a) The number of sales and use tax deferral certificates granted;

(b) The number and type of units in building properties receiving a tax deferral;

(c) The number and type of units meeting affordable housing requirements;

(d) The total monthly rent amount for each affordable and market rate unit; and

(e) The dollar amount of the tax deferral issued for each conversion and the total dollar amount of tax deferrals granted within the city.

NEW SECTION. **Sec.**  If the owner intends to discontinue compliance with the affordable housing requirements as described in this chapter or any other condition to the deferral program, the owner must notify tenants, the city, and the department 60 days before the owner's discontinuance. If the city and the department are notified by the owner, or if the city or department discover that the building no longer meets the qualifications of the tax deferral, the tax deferral is canceled and all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes may not be extinguished by insolvency or other failure of the recipient.

NEW SECTION. **Sec.**  If the owner intends to convert any affordable housing rental units to market rate units after the 10- year affordability period under section 6 of this act ends, the owner must provide tenants of affordable housing rental units with notification of intent to provide the tenant with rental relocation assistance. The owner must provide tenant relocation assistance in an amount equal to one month's rent to a low-income household within the final month of the low-income household's lease. To be eligible for tenant relocation assistance under this section, the tenant must occupy an affordable housing unit at the time the 10-year affordability requirement under section 6 of this act ends and must qualify as a low-income household under this chapter at the time relocation assistance is sought.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preferences contained in chapter . . ., Laws of 2024 (this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. 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 incentivize the repurposing of existing buildings for affordable housing.

(4) It is the legislature's intent to provide a deferral from sales and use taxes qualifying under chapter 82.--- RCW (the new chapter created in section 17 of this act) for the conversion of commercial buildings into affordable housing units for low-income households.

(5) In order to obtain the data necessary to measure the effectiveness of these tax preferences in achieving the public policy objective described in this section, the joint legislative audit and review committee may refer to any data collected by the state.

NEW SECTION. **Sec.**  Sections 1 through 15 of this act constitute a new chapter in Title 82 RCW.

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