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**SENATE BILL 5279**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators J. Wilson and Lovick

AN ACT Relating to expanding a sales and use tax deferral program for affordable housing to include structures initially used as temporary employee housing for employees constructing warehouses, distribution centers, and other large facilities; amending RCW 82.92.005, 82.92.007, 82.92.010, 82.92.030, and 82.92.040; and creating a new section.

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

**Sec.**  RCW 82.92.005 and 2022 c 241 s 1 are each amended to read as follows:

The legislature finds that:

(1) Many cities in Washington are actively planning for growth under the growth management act, chapter 36.70A RCW;

(2) The construction industry provides living wage jobs for families across Washington;

(3) In the current economic climate, the creation of additional affordable housing units is essential to the economic health of our cities and our state;

(4) It is critical that Washington state promote its cities and its property owners that will provide affordable housing;

(5) A meaningful, fair, and predictable economic incentive should be created to stimulate the redevelopment of underdeveloped property in targeted urban areas through a limited sales and use tax deferral program as provided by this chapter;

(6) This limited tax deferral will help the owners of underdeveloped property and housing equity property achieve the highest and best use of land and enable cities to more fully realize their planning goals and will help ensure limited resources are narrowly focused on affordable housing; and

(7) Data regarding the number of additional affordable units created due to the limited tax deferral will be evaluated to determine if this tool could be used to increase affordable housing in other areas of the state.

**Sec.**  RCW 82.92.007 and 2022 c 241 s 2 are each amended to read as follows:

It is the purpose of this chapter to encourage the redevelopment of underdeveloped land in targeted urban areas, thereby increasing affordable housing, employment opportunities, and helping accomplish the other planning goals of Washington cities. Additionally, it is the purpose of this chapter to support investments by regional affordable housing collaborators by maximizing the use of these funds directly for affordable housing. The legislative authorities of cities to which this chapter applies may authorize a sales and use tax deferral for an investment project within the city if the legislative authority of the city finds that it has housing equity property or there are significant areas of underdeveloped land and a lack of affordable housing in areas proximate to the land. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid.

**Sec.**  RCW 82.92.010 and 2022 c 241 s 3 are each amended to read as follows:

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

(1) "Affordable homeownership housing" means housing intended for owner occupancy to low or moderate-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(2) "Affordable rental housing" means housing for very low or low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(3) "Applicant" means an owner of underdeveloped property.

(4) "City" means a city with a population of at least 135,000 and not more than 250,000, or a city with housing equity property located in a county that does not plan under the growth management act, at the time the city initially establishes the program under this section.

(5) "Conditional recipient" means an owner of underdeveloped land granted a conditional certificate of program approval under this chapter, which includes any successor owner of the property.

(6) "County median price" means the most recently published quarterly data of median home prices by the Washington center for real estate research.

(7) "Eligible investment project" means an investment project that is located in a city and receiving a conditional certificate of program approval.

(8) "Fair market rent" means the estimates of 40th percentile gross rents for standard quality units within counties as published by the federal department of housing and urban development.

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

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

(11) "Housing equity property" means an investment project that is or will be funded in whole or in part through contributions by a regional affordable housing collaborator where the property was initially used as temporary employee housing by the regional affordable housing collaborator.

(12)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

((~~(12)~~)) (13) "Investment project" means an investment in multifamily housing, including labor, services, and materials incorporated in the planning, installation, and construction of the project. "Investment project" includes investment in related facilities such as playgrounds and sidewalks as well as facilities used for business use for mixed-use development.

((~~(13)~~)) (14) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 50 percent but is at or below 80 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.

((~~(14)~~)) (15) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 80 percent but is at or below 115 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.

((~~(15)~~)) (16) "Multifamily housing" means a building or a group of buildings having two 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 rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

((~~(16)~~)) (17) "Owner" means the property owner of record.

((~~(17)~~)) (18) "Regional affordable housing collaborator" means a private employer that has established a housing equity property fund to create housing through grants to housing partners such as nonprofit organizations and public entities.

(19) "Underdeveloped property" means land used as a surface parking lot for parking of motor vehicles off the street or highway, that is open to public use with or without charge, as of June 9, 2022.

((~~(18)~~)) (20) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 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.

**Sec.**  RCW 82.92.030 and 2022 c 241 s 5 are each amended to read as follows:

An owner of underdeveloped property or housing equity property seeking a sales and use tax deferral under this chapter on an investment project must complete the following procedures:

(1) The owner must apply to the city on forms adopted by the governing authority. The application must contain the following:

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

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

(c) A statement of the expected number of affordable housing units to be created;

(d) A statement that the applicant is aware of the potential tax liability involved if the investment project ceases to be used for eligible uses under this chapter;

(e) A statement that the applicant is aware that the investment project must be completed within three years from the date of approval of the application;

(f) A statement that the applicant is aware that the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 consecutive months; and

(g) A statement by an owner of underdeveloped property that the applicant would not have built in this location but for the availability of the tax deferral under this chapter;

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

(3) The application must be accompanied by the application fee, if any, required under this chapter. The duly authorized administrative official or committee of the city may permit the applicant to revise an application before final action by the duly authorized administrative official or committee of the city.

**Sec.**  RCW 82.92.040 and 2022 c 241 s 6 are each amended to read as follows:

The duly authorized administrative official or committee of the city may approve the application and grant a conditional certificate of program approval if it finds that:

(1)(a) The investment project is set aside primarily for multifamily housing units and the applicant commits to renting or selling at least 50 percent of the units as affordable rental housing or affordable homeownership housing to very low, low, and moderate-income households. In a mixed use project, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units;

(b) At least 50 percent of the investment project set aside for multifamily housing units will be rented at a price at or below fair market rent for the county or sold at a price at or below county median price; and

(c) The applicant commits to any additional affordability and income eligibility conditions adopted by the local government under this chapter not otherwise inconsistent with this chapter;

(2) The investment 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 investment project will occur on land that constitutes underdeveloped property or housing equity property;

(4) The area where the investment project will occur is located within an area zoned for residential or mixed uses;

(5) The terms and conditions of the implementation of the development meets the requirements of this chapter and any requirements of the city that are not otherwise inconsistent with this chapter;

(6) The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW; and

(7) All other requirements of this chapter have been satisfied as well as any other requirements of the city that are not otherwise inconsistent with this chapter.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in chapter . . ., Laws of 2023 (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 to be used to determine eligibility for preferential tax treatment.

(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 expand affordable housing options for very low to moderate-income households, specifically in underdeveloped urban areas and urban areas where a substantial influx of employees related to a small number of very large employers have contributed to a lack of affordable housing.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate the number of increased housing units on housing equity property. If a review finds that the number of affordable housing units has not increased, then the legislature intends to repeal this tax preference.

(b) The review must be provided to the fiscal committees of the legislature by December 31, 2030.

(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 any available data source, including data collected by the department under RCW 82.92.080.

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