

SENATE BILL REPORT

SB 5591

As of February 7, 2025

Title: An act relating to a sales and use tax remittance program for affordable housing.

Brief Description: Creating a sales and use tax remittance program for affordable housing.

Sponsors: Senators Bateman, Alvarado, Lovelett, Nobles and Trudeau.

Brief History:

Committee Activity: Housing: 2/07/25.

Brief Summary of Bill

- Allows a city or county legislative authority to create a sales and use tax remittance program for the development of affordable housing.

SENATE COMMITTEE ON HOUSING

Staff: Melissa Van Gorkom (786-7491)

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent. Local sales and use tax rates vary from 0.5 percent to 4.1 percent, depending on the location.

Tax Preference Performance Statement. State law provides a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a tax preference

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performance statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempted from expiration.

Summary of Bill: Local Sales and Use Tax Remittance Program for Affordable Housing.

A city or county legislative authority may create a sales and use tax remittance program for the development of affordable housing by eligible organizations. An eligible organization is a nonprofit developer, for-profit developer, public housing authority, public development authority, or other applicants eligible under rules established by the Washington State Housing Finance Commission.

To create a sales and use tax remittance program for the development of affordable housing, a governing authority must adopt a resolution stating the time and place of a hearing to consider the tax remittance program and provide information pertaining to the application, approval, and appeals process.

The governing authority must give notice of the hearing each week for two consecutive weeks no more than 30 days before the date of the hearing in a paper having general circulation in the city or county. The governing authority may authorize the creation of the program following the hearing. A county may not adopt the remittance program within the limits of a city that adopts the program.

Application. To receive an exemption, an eligible organization must apply to the city or county on forms adopted by the governing authority and verify the information provided in the application by oath or affirmation. The governing authority may establish an application fee to cover the cost in administering the program which must be paid at the time of application.

An authorized administrative official or committee of the city or county may approve an application and grant a conditional certificate of program approval if:

- the project is set aside primarily for affordable housing or mixed-use affordable housing development and the applicant commits to renting or selling at least 50 percent of the units to low-income households for a minimum of 40 years;
- the applicant commits to any additional affordability and income eligibility conditions adopted by the local government;
- the 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;
- the area is located within an area zoned for residential or mixed uses; and
- all other requirements are met.

If the application is denied, the city or county must state in writing the reasons for denial and send the notice within ten days to the applicant's last known address. The applicant

may appeal the decision within 30 days after receipt based upon the record made before the city or county with the burden of proof on the applicant to show that there was no substantial evidence to support the decision. The decision of the city or county on the appeal is final.

An eligible organization with a conditional certificate must submit an application to Department of Revenue (DOR) before initiation of construction of the project. To qualify for the exemption, the eligible organization must be registered with DOR.

Certificate of Completion. Within 30 days of the issuance of a certificate of occupancy for a project, the conditional recipient must file with the governing authority:

- a description of the work completed and a statement that the eligible investment project qualifies the property for a sales and use tax remittance;
- a statement of the new affordable housing to be offered; and
- a statement that the work has been completed within three years of the conditional certificate of program approval.

Within 30 days of receipt, the governing authority must issue a certificate of completion if it determines the investment project continues to qualify for the tax remittance. If a governing authority denies a conditional recipient of a sales and use tax remittance they must notify DOR within 15 days. The conditional recipient may file an appeal in superior court within 30 days of notification by the governing authority to deny a remittance of sales and use taxes.

Sales and Use Tax Remittance. An eligible organization claiming a remittance must pay all state and local sales and use taxes on purchases of materials incorporated into, and labor and services rendered in respect to, a qualifying project and apply to DOR for a remittance of the tax paid. To receive remittance the eligible organization must submit to DOR:

- a remittance application in a form and manner required by DOR;
- a certificate of occupancy from the permitting authority;
- a certificate of completion from the city or county affirming the project meets the requirements;
- an information sheet specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which remittance is claimed;
- a signed affidavit from an authorized representative of the city or county requesting or declining the remittance; and
- any other documentation supporting the application.

The tax remittance is allocated to the eligible organization and the city or county as follows:

- 50 percent of the state and local sales and use taxes imposed by the city or county that has authorized the remittance program is allocated to the eligible organization; and
- 50 percent of the state sales and use tax must be distributed to the city or county that authorized the remittance program.

The city or county must use remittance money to:

- acquire, rehabilitate or construct affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supported housing services;
- acquire real property for future affordable housing development;
- fund the operation and maintenance of new units of affordable or permanent supportive housing; or
- operate and deliver behavioral health treatment programs and services.

If the city or county utilizes general fund moneys to support a qualifying project under a remittance program, the city or county may recompense itself.

DOR may not accept applications for the remittance after December 31, 2035.

Cancellation or Transfer of an Exemption. Exempted taxes are immediately due and payable if the eligible organization notifies the city or county and DOR—within 40 years from the date of the certificate of completion—that they voluntarily opt to discontinue compliance with the requirements, or a city or county finds that a portion of the project is changed or will be changed to no longer qualify for remittance.

Transfer of investment project ownership does not terminate the exemption if the successor meets the eligibility requirements. The governing authority must certify to DOR that the successor meets the requirements of the exemption. The transferor must notify the governing authority and DOR of the transfer and provide the information necessary for DOR to transfer the exemption. If the transferor fails to make the notification, all exempted sales and use taxes are immediately due and payable.

DOR must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of exemption.

Reporting. Thirty days after the issuance of the certificate of occupancy and each year thereafter for 40 years, the recipient must file an annual report with the designated authorized representative of the city that includes:

- a statement of the affordable housing units constructed;
- a certification that the property has not changed use; and
- any additional information requested by the city or county.

The city or county must report annually to DOR by December 31st of each year:

- identifying information for each project that received a certificate of completion; and
- notification that the project either continues to qualify for the remittance or no longer meets the qualifications.

Tax Preference Performance Statement. A TPPS specifies that the public policy objective is to expand affordable housing options for low-income households. JLARC must evaluate

the number of housing units and affordable housing units created by projects receiving the exemptions and provide a report to the fiscal committees of the Legislature by December 31, 2033. If the review finds that the number of affordable housing units has not increased, then the Legislature intends to repeal the sales and use tax remittance.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: It is expensive and difficult to build housing and we are working to finding ways to make housing more economical and efficient. The increases in mortgage rates, interest rates, inflation, and overall cost of everything is making it harder and harder for non-profits to build the housing we need whether it is for permanent supportive housing, affordable rentals or permanently affordable home ownership. The bill provides a local option revenue source and the opportunity to incentivize affordable housing development within our jurisdictions. The single biggest factor in our rate of construction is securing funding. Public subsidy alone is not going to build units we need by 2044. This program is one tool to engage private development to build affordable workforce and mixed income housing that is necessary to house firefighters, bartenders, social workers, baristas etc. If a developer's project qualifies for this program and is located in a multi-family tax exemption area, the affordability requirements of the program will automatically qualify the project for multifamily property tax abatement helping to stack those incentives so developers can build more. Our public partnerships are the difference between building and not building. These funds could cover critical costs like site work and building materials and would give a much needed predictable source of income to deliver more homes. The bill also provides resources back to the local government to reinvest in specifically tailored housing approaches. There are some possible improvements to the bill related to the review period length and the definition of affordable housing.

OTHER: This bill has the potential to create new sources of local funding that can be leveraged to bring additional state resources to communities that desperately need housing, most of which wouldn't otherwise see this type of investment. The bill also is an effective tool for enabling the full spectrum of affordable housing production and it could broaden the range of active affordable housing developers to help produce housing at a scale necessary for curving the state's affordable housing crisis.

Persons Testifying: PRO: Senator Jessica Bateman, Prime Sponsor; Curtis Steinhauer, Washington State Association of Counties; Elizabeth Walker, South Puget Sound Habitat for Humanity; Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Nicholas Carr, Office of the Governor; Carl Schroeder, Association of Washington Cities;

Andrew Calkins, Bellingham & Whatcom County Housing Authorities; Amanda DeShazo, Tacoma-Pierce County Affordable Housing Consortium.

OTHER: Zac Baker, Southport Financial Services.

Persons Signed In To Testify But Not Testifying: No one.