

A New Washington State Funding Tool for Affordable Housing

Washington State Substitute House Bill 1406 was signed into law by Governor Inslee on May 9, 2019 and will provide cities and counties with a new source of funds for affordable housing and supportive services. Cities and counties will need to act quickly to access this tool. The bill authorizes cities and counties to implement a local sales tax, credited against the state sales tax, to fund affordable housing. The offset against the state sales tax results in no tax increase to consumers and shifts the funding of the affordable housing to the state.

The legislation allows a city or county to issue general obligation or revenue bonds payable from the sales tax revenues. The sales tax revenues and the bonds payable from that revenue stream may only be used to acquire, rehabilitate or construct affordable housing or facilities for supportive housing services to people with mental or behavioral disorders; or for the operations and maintenance costs of affordable and supportive housing. Cities with a population of 100,000 or less and counties with a population of 400,000 or less may also use the funds for rental assistance. The housing and services may only be provided to people at or below 60 percent of city or county median income.

The maximum tax rate cannot exceed either 0.0146 percent or 0.0073 percent, as described below, and the tax expires 20 years after it is first imposed by the city or county. The maximum amount a city or county may receive in any year will be capped based on the jurisdiction's taxable retail sales in the state fiscal year ending June 30, 2019. Access to the maximum funds by cities is contingent on cities taking certain other actions to fund affordable housing, as described below. The 0.0146 percent tax rate is available to cities and counties that implement the new tax within the first twelve months after the effective date of the bill, July 28, 2019, and that meet the following requirements:

1. A city levying a "qualifying local tax,"
2. A city located within a county that has declared it will not levy the local sales tax, or
3. A county levying the local sales tax in unincorporated areas and within a city that is not levying the local sales tax (no double dipping).

Commencing July 28, 2020 (twelve months after the effective date of the bill), the 0.0146 percent tax rate is only available to:

1. A city levying a "qualifying local tax," or
2. A county levying the local sales tax within unincorporated areas and within a city that is not levying the local sales tax.

A qualifying local tax is:

1. An affordable housing levy under RCW 84.52.105,

2. Property tax levies authorized by RCW 84.55.050 (a levy lid lift) which are dedicated to affordable housing,
3. The sales and use tax for housing and related services under RCW 82.14.530, provided, that the city must have imposed the tax at a minimum of at least half of the authorized rate, and
4. The sales tax for chemical dependency and mental health treatment services or therapeutic courts under RCW 82.14.460.

To implement the new sales tax for affordable housing, a simple majority of the city or county legislative body must adopt (A) a resolution of intent to pass the tax no later than January 28, 2020 (six months after the effective date of the bill), and (B) a resolution authorizing the tax by July 28, 2020 (twelve months after the effective date).

Examples of potential uses for the funds include land banking for affordable housing, down payment assistance, home repair, rental assistance (if eligible), and loans for the development of affordable housing projects. Because the estimated amount of annual taxes that can be collected by many smaller jurisdictions will be very modest, cities and counties may consider using the authority granted in the bill to enter into interlocal agreements with each other or with housing authorities to pool the tax receipts, issue bonds, and/or provide the housing or services.

For more information regarding interlocal agreements or assistance with a form of resolution of intent, please contact any of our public finance lawyers listed below.

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