Multiple Agency Fiscal Note Summary

Bill Number: 5755 SB	Title: Vacant land redevelopment

Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	0	0	0	(5,370,000)	(5,370,000)	(5,380,000)	(7,000,000)	(7,000,000)	(7,020,000)
Total $	**0**	**0**	**0**	**(5,370,000)**	**(5,370,000)**	**(5,380,000)**	**(7,000,000)**	**(7,000,000)**	**(7,020,000)**

Agency Name	2021-23		2023-25		2025-27	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other				(2,564,097)		(3,346,197)
Local Gov. Other	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.					
Local Gov. Total				(2,564,097)		(3,346,197)

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Department of Revenue	.2	125,000	125,000	125,000	.0	0	0	0	.0	0	0	0
Total $	**0.2**	**125,000**	**125,000**	**125,000**	**0.0**	**0**	**0**	**0**	**0.0**	**0**	**0**	**0**

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Agency Name	2021-23			2023-25			2025-27		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts									
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

NONE

Prepared by: Cheri Keller, OFM	Phone: (360) 584-2207	Date Published: Final

Department of Revenue Fiscal Note

Bill Number: 5755 SB	**Title:** Vacant land redevelopment	**Agency:** 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2022	FY 2023	2021-23	2023-25	2025-27
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax				(5,370,000)	(7,000,000)
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax				(10,000)	(20,000)
Total $				(5,380,000)	(7,020,000)

Estimated Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.2	0.2	0.2		
Account					
GF-STATE-State 001-1	96,800	28,200	125,000		
Total $	96,800	28,200	125,000		

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- [X] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- [ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- [X] Capital budget impact, complete Part IV.
- [ ] Requires new rule making, complete Part V.

Legislative Contact:	Jeffrey Mitchell	Phone: 360-786-7438	Date: 01/10/2022
Agency Preparation:	Marianne McIntosh	Phone: 360-534-1505	Date: 01/17/2022
Agency Approval:	Don Gutmann	Phone: 360-534-1510	Date: 01/17/2022
OFM Review:	Cheri Keller	Phone: (360) 584-2207	Date: 01/17/2022

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in SB 5755, 2022 Legislative Session.

CURRENT LAW:
The construction of housing, including affordable housing, is subject to retail sales and use taxes.

PROPOSAL:
This bill allows a city with a population of at least 150,000 and not more than 250,000 to create a sales and use tax deferral program for multifamily housing developed on vacant or undeveloped land. To create the program, the city must adopt a resolution and have significant areas of vacant or undeveloped land with a lack of affordable housing nearby.

The owner of vacant or undeveloped land must apply to the city for the sales and use tax deferral. The application must include information regarding location of the project, site plan, and number of affordable housing units created. The applicant (owner) must indicate they understand the following:
- Potential tax liability if the investment no longer qualifies;
- The project must be completed in three years; and
- The applicant would not have built at the project location if not for the deferral program.

The city must rule on the application within 90 days. To approve the application, the investment property must meet the following criteria:
- Primarily multifamily units and renting or selling at least 50% of the units as affordable housing units to low and moderate-income households; or
- At least 50% of investment project rented at a price at or below fair market rent for county or sold below county median price; and
- Must be on land that is vacant or undeveloped and zoned for multifamily residential or mixed uses.

Once approved the city issues a conditional certificate of program approval for each eligible project to the conditional recipient (applicant). Prior to initiating construction, the conditional recipient must apply to the Department of Revenue (Department) and include a copy of the conditional certificate of program approval issued by the city, estimated construction 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 and issue a sales and use tax deferral certificate for state and local taxes for each eligible project. The Department may not accept applications for the deferral after June 30, 2032.

The Department must keep a running total of all estimated sales and use tax deferrals provided during each fiscal biennium.

The city must report annually by December 31st of each year, beginning in 2022, to the Department of Commerce. The report must include the following information:
- The number of program approval certificates granted;
- The total number and type of new buildings constructed;
- The number of affordable housing units resulting from the new construction; and
- The estimated value of the sales and use tax deferral for each investment project receiving a program approval and the total estimated value of sales and use tax deferrals granted.

If a conditional recipient maintains the property for qualifying purposes for at least 10 years, the deferred sales and use taxes need not be repaid.

Within 30 days of the certificate of occupancy the conditional recipient must file with the city the following :
- A description of the work that has been completed and a statement that the eligible investment project qualifies for the deferral
- New affordable housing is being offered because of the new construction; and
- The project was completed within three years of issuance of the conditional certificate.

The city has 30 days to verify the project met the deferral requirements. The project must be completed within three years of the certificate issuance date unless construction was delayed due to circumstances beyond the conditional recipient's control, which the city can grant an extension up to 24 months. If the city finds the project did not meet the deferral requirements, the city must notify the Department and taxes are immediately due. The Department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date the sales and use tax deferral certificate was issued.

Starting 30 days after the certificate of occupancy and 10 years after, the conditional recipient must file an annual report with the city with the following details:
- List of the affordable housing units constructed on the property as of the anniversary date ;
- Certify the property has not changed use;
- Description of changes or improvements since issuance of conditional certificate; and
- Any additional information requested by the city.

Investment project means an investment in multifamily housing including labor, services, and materials incorporated in the planning, installation, and construction of the project. This includes investment in related facilities such as playgrounds and sidewalks as well as facilities uses for business use for mixed-use development.

EFFECTIVE DATE:
The bill takes effect 90 days after final adjournment of the session in which it is enacted.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency , identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources . Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates . Distinguish between one time and ongoing functions .

ASSUMPTIONS:
- Four cities are eligible to impose the sales and use tax deferral: Bellevue, Spokane, Tacoma, and Vancouver.
- The bill requires eligible cities to adopt a resolution to create a sales and use tax deferral. For this estimate, assume the program is established within a year and eligible projects begin in Fiscal Year 2024.
- Using data from the Center on Urban & Metropolitan Policy study and the land area of the four eligible cities, there is an estimated 17,000 acres of vacant city land.
- According to U.S. Census data, on average there are 650 apartment buildings with five units or more built each year in Washington.
- The average construction cost of a five-story 50-unit apartment building is $10.5 million.
- The four eligible jurisdictions represent about 10% of the state's population.
- U.S. Census data shows that residential buildings with 20 or more units took over 19 months to complete in 2020.
- For the purpose of this estimate, two affordable housing apartment buildings will be built per year on vacant land in two eligible cities for a total of four projects.
- The annual adjustment to construction costs mirrors the annual growth for residential construction of multi-family buildings consumer price index (CPI), November 2021 Forecast. However, construction costs in 2021 sky-rocketed due to manufacturing issues, supply chain delays, and raw material shortages. Over the last twelve months, costs increased 19.2% nationally and 21.3% in Seattle.
- To estimate local government impacts, the estimate uses the urban average local tax rate of 3.125%.
- The revenue impact of this proposal could be considerably higher if all eligible cities create the exemption program and

construction costs continue to increase.

POTENTIAL LITIGATION:
Legislation creating new exemptions and deferrals for construction projects presents a risk that the federal government or federal contractors will seek to re-litigate Washington v. United States. This risk increases with each additional exemption or deferral that the state enacts.

The Department's legal counsel at the Attorney General's Office has opined that the federal contractor risk applies to all exemptions and deferrals of construction activity, not just construction projects of the type that the federal government is likely to engage in. It also applies even if the exemption or deferral applies to federal construction projects as well as non-federal construction projects.

Sales/use tax exemptions pose the greatest legal risk because they plainly treat the beneficiaries of the exemption more favorably than federal contractors are treated. Sales /use tax deferrals also pose a significant legal risk. Each such exemption or deferral increases the likelihood that the federal government or federal contractors will seek to re-litigate Washington v. United States in which they would claim that Washington now discriminates against federal contractors.

If a legal challenge to a deferral or exemption were successful, in addition to lost future revenues, refunds potentially would be owed under the statutory period (current year plus four previous years). Each year approximately $90 million is collected on federal government contracting. If refunds were included as part of a potential court decision, the revenue impact could reach nearly $500 million.

DATA SOURCES
- Office of Financial Management, April 2021 population data
- IHS Markit forecast for CPI-Residential Construction of Multi-family Buildings, November 2021
- United States Census Bureau, "Building Permits Survey." https://www.census.gov/construction/bps/stateannual.html
- Pagano, M. and Bowman, A. (2020, December) "Vacant Land in Cities: An Urban Resource." The Brookings Institution. https://www.brookings.edu/wp-content/uploads/2016/06/paganofinal.pdf
- "How Much Does it Cost to Build an Apartment Building?" (2021, July 8). Fixr. Retrieved January 12, 2022. https://www.fixr.com/costs/build-apartment

REVENUE ESTIMATES
This bill decreases state revenues by an estimated $2 million in Fiscal Year 2024, the first full year of impacted collections. This bill also decreases local revenues by an estimated $1 million in Fiscal Year 2024, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):

FY 2022 -	$ 0
FY 2023 -	$ 0
FY 2024 -	($ 2,040)
FY 2025 -	($ 3,340)
FY 2026 -	($ 3,450)

FY 2027 - ($ 3,570)

Local Government, if applicable (cash basis, $000):
FY 2022 - $ 0
FY 2023 - $ 0
FY 2024 - ($ 980)
FY 2025 - ($ 1,610)
FY 2026 - ($ 1,660)
FY 2027 - ($ 1,720)

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived . Explain how workload assumptions translate into cost estimates . Distinguish between one time and ongoing

ASSUMPTIONS:
- Expenditures assume four project applications per year beginning in Fiscal Year 2023, with completion of the first projects i Fiscal Year 2025.
- This legislation does not include a tax performance statement or exemption from RCW 82.32.805 and 82.32.808. Expenditures do not include costs for performance reports and data collection and would increase if required.

FIRST YEAR COSTS:
The Department will incur total costs of $96,800 in Fiscal Year 2022. These costs include :

Labor Costs - Time and effort equates to 0.2 FTE.
- Test and verify computer system changes to provide for new tax deferral with applications.

Object Costs - $70,400.
- Contract computer system programming.

SECOND YEAR COSTS:
The Department will incur total costs of $28,200 in Fiscal Year 2023. These costs include :

Labor Costs - Time and effort equates to 0.2 FTE.
- Create a Special Notice and identify publications and information that need to be created or updated on the Department’s website.
- Respond to tax ruling requests, email inquiries, and more difficult call backs from the telephone information center.

ONGOING COSTS
There are no ongoing costs.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.2	0.2	0.2		
A-Salaries and Wages	16,100	17,700	33,800		
B-Employee Benefits	5,800	6,400	12,200		
C-Professional Service Contracts	70,400		70,400		
E-Goods and Other Services	2,500	2,700	5,200		
G-Travel	400		400		
J-Capital Outlays	1,600	1,400	3,000		
Total $	$96,800	$28,200	$125,000		

III. B - Detail: *List FTEs by classification and corresponding annual compensation . Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
IT SYS ADM-JOURNEY	89,916	0.1		0.1		
MGMT ANALYST4	70,956	0.1		0.1		
TAX POLICY SP 4	88,644		0.2	0.1		
Total FTEs		0.2	0.2	0.2		

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and dexcribe potential financing methods

NONE

None.

Part V: New Rule Making Required

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5755 SB	Title: Vacant land redevelopment

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- [X] Cities: Certain cities would be authorized to create a sales and use tax deferral program.
- [ ] Counties:
- [ ] Special Districts:
- [ ] Specific jurisdictions only:
- [ ] Variance occurs due to:

Part II: Estimates

- [ ] No fiscal impacts.
- [X] Expenditures represent one-time costs: Resolution adoption costs.
- [ ] Legislation provides local option:
- [X] Key variables cannot be estimated with certainty at this time: Number of projects that are awarded certification by a city's sale and use deferral program.

Estimated revenue impacts to:

Jurisdiction	FY 2022	FY 2023	2021-23	2023-25	2025-27
City				(762,874)	(995,566)
County				(921,945)	(1,203,156)
Special District				(879,278)	(1,147,475)
TOTAL $				(2,564,097)	(3,346,197)
GRAND TOTAL $					(5,910,294)

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: Jordan Laramie	Phone: 360-725-5044	Date: 01/17/2022
Leg. Committee Contact: Jeffrey Mitchell	Phone: 360-786-7438	Date: 01/10/2022
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 01/17/2022
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/18/2022

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This legislation would authorize cities to create a sales and use tax deferral program for the purposes of encouraging the redevelopment of vacant or undeveloped land in urban areas. Under this act, the governing authority must adopt a resolution of intention to create a sales and use tax deferral program.

Sec. 4: Establishes the requirements of the resolution that would create a sales and use tax deferral program to encourage redevelopment of vacant or undeveloped land in urban areas.

Sec. 5: Specifies the requirements of applicants, including an application fee.

Sec 6: Would authorize a city to issue a conditional certificate of program approval if a project meets set asides for multifamily affordable housing or certain income eligibility criteria.

Sec. 7: Establishes a city's responsibilities for a program applicant's approval, denial, and appeal.

Sec. 8: Authorizes the city to establish an application fee for this program's administration.

Sec. 10: Cities that establish this program must annually report to the Department of Commerce on certain program details, beginning December 31, 2022.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This legislation would have an indeterminate expenditure impact of approximately $34,100 for impacted cities to create a sale and use tax deferral program meant to encourage the redevelopment of vacant or undeveloped land in urban areas. The annual reports to the Department of Commerce for cities that adopt the sales and use tax deferral program would have variable costs depending on the amount of certifications its program issue, which cannot be known in advance.

Resolution Adoption Costs:
Local governments must adopt a resolution to implement the provisions of this act. The Local Government Fiscal Program Unit Cost Mode estimates that the cost the typical cost to adopt an ordinance per jurisdiction ranges from $568 for a simple ordinance to $8,523 for a complex ordinance. These costs include costs for draft ordinances, advisory commission meeting and recommendation, finalized ordinance, publication of ordinance, and general public information. Assuming these ordinances are complex with a hearing of the same complexity the following ordinance adoption costs can be estimated:

Four cities adopting a complex ordinance with a hearing of same complexity: (4 cities x $8,523) = $34,092

Reporting Requirements to the Department of Commerce:
For cities that adopt the resolution under this act, there would be annual reports due to the Department of Commerce about the number of program certificates granted to program applicants, the total number and type of new buildings constructed, and the number of affordable housing units that result from new construction. The amount of time that is needed to complete these reports would depend on the number of projects that are awarded certificates, which cannot be known in advance.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

The Department of Revenue (DOR) issued a fiscal note with the following assumptions. The local government impact is indeterminate because more or less buildings could be constructed under the programs offered by cities that implement the sales and use tax deferral program established by this act. The methodology for this impact is described at the end of this section.

DEPARTMENT OF REVENUE ASSUMPTIONS:

- Four cities are eligible to impose the sales and use tax deferral: Bellevue , Spokane, Tacoma, and Vancouver.
- The bill requires eligible cities to adopt a resolution to create a sales and use tax deferral . For this estimate, assume the program is established within a year and eligible projects begin in Fiscal Year 2024 .
- Using data from the Center on Urban & Metropolitan Policy study and the land area of the four eligible cities , there is an estimated 17,00 acres of vacant city land.
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- The annual adjustment to construction costs mirrors the annual growth for residential construction of multi-family buildings consumer price index (CPI), November 2021 Forecast. However, construction costs in 2021 sky-rocketed due to manufacturing issues , supply chain delays, and raw material shortages. Over the last twelve months, costs increased 19.2% nationally and 21.3% in Seattle.
- To estimate local government impacts, the estimate uses the urban average local tax rate of 3 .125%.
- The revenue impact of this proposal could be considerably higher if all eligible cities create the exemption program and construction costs continue to increase.

POTENTIAL LITIGATION:
Legislation creating new exemptions and deferrals for construction projects presents a risk that the federal government or federal contractors will seek to re-litigate Washington v . United States. This risk increases with each additional exemption or deferral that the state enacts.

The Department's legal counsel at the Attorney General's Office has opined that the federal contractor risk applies to all exemptions and deferrals of construction activity, not just construction projects of the type that the federal government is likely to engage in . It also applies even if the exemption or deferral applies to federal construction projects as well as non-federal construction projects .

Sales/use tax exemptions pose the greatest legal risk because they plainly treat the beneficiaries of the exemption more favorably than federal contractors are treated. Sales/use tax deferrals also pose a significant legal risk . Each such exemption or deferral increases the likelihood that the federal government or federal contractors will seek to re-litigate Washington v . United States in which they would claim that Washington now discriminates against federal contractors .

If a legal challenge to a deferral or exemption were successful , in addition to lost future revenues, refunds potentially would be owed under the statutory period (current year plus four previous years). Each year approximately $90 million is collected on federal government contracting. If refunds were included as part of a potential court decision , the revenue impact could reach nearly $500 million.

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- "How Much Does it Cost to Build an Apartment Building?" (2021 , July 8). Fixr. Retrieved January 12, 2022. https://www.fixr.com/costs/build-apartment

REVENUE ESTIMATES
This bill decreases state revenues by an estimated $2 million in Fiscal Year 2024 , the first full year of impacted collections. This bill also decreases local revenues by an estimated $1 million in Fiscal Year 2024 , the first full year of impacted collections.

TOTAL REVENUE IMPACT:

Local Government, if applicable (cash basis, $000):
FY 2022 - $ 0

FY 2023 - $ 0
FY 2024 - ($ 980)
FY 2025 - ($ 1,610)
FY 2026 - ($ 1,660)
FY 2027 - ($ 1,720)

LOCAL GOVERNMENT FISCAL NOTE REVENUE IMPACT:
Counties:
FY 2023 - 0.00
FY 2024 - 0.00
FY 2025 - ($ 348,844.39)
FY 2026 - ($ 573,101.51)
FY 2027 - ($ 590,899.69)
FY 2028 - ($ 612,257.51)

Cities:
FY 2023 - 0.00
FY 2024 - 0.00
FY 2025 - ($ 288,655.46)
FY 2026 - ($ 474,219.68)
FY 2027 - ($ 488,947.00)
FY 2028 - ($ 506,619.79)

Special Districts:
FY 2023 - 0.00
FY 2024 - 0.00
FY 2025 - ($ 332,700.15)
FY 2026 - ($ 546,578.81)
FY 2027 - ($ 563,553.31)
FY 2028 - ($ 583,922.71)

METHODOLOGY:
The distributions in this note for cities, counties, and special districts are based on DOR data for local sales and use tax distributions from Calendar Year 2020. Mitigation payments and distributions to hospital benefit zones are not factored into this distribution . The result is a distribution of 35.96 percent to counties, 29.75 percent to cities, and 34.29 percent to special districts. The one percent DOR administrative fee has also been deducted.

SOURCES:
Department of Revenue, FN 5755 (2022)
Department of Revenue Local Tax Distributions (2020)
Local Government Fiscal Note Program, Sales and Use Tax Distributions Model (2022)