

2019 DRAFTING REQUEST

Bill

For: **Bob Kulp (608) 267-0280** Drafter: **elunder**
 By: **Laura** Secondary Drafters:
 Date: **12/20/2019** May Contact:
 Same as LRB: **-5345**

Submit via email: **YES**
 Requester's email: **Rep.Kulp@legis.wisconsin.gov**
 Carbon copy (CC) to: **erika.lunder@legis.wisconsin.gov**
joseph.kreye@legis.wisconsin.gov
michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Sales tax exemption for workforce housing

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	elunder 1/9/2020	csicilia 1/9/2020			
/P1	elunder 1/14/2020	csicilia 1/14/2020	mbarman 1/9/2020		State Tax Exempt
/1			mbarman 1/14/2020	dwalker 1/14/2020	State Tax Exempt

FE Sent For: *At Intro* **<END>**

12/20/19

Hi Erika- I've re-attached above the old draft 2128/1 and the 11.12.19 DOR Technical Memo. I've also included your feedback/comments regarding the DOR memo suggestions in the e-mail attached. As we discussed yesterday, I will send back to you both the Assembly (LRB-2128) and Senate (LRB 4459/1) companion jackets. As we agreed you will start over fresh and create brand new Assembly and Senate companion bill drafts. Below is outline of all the changes Bob wants added to the new bill draft.

1. Bob agreed to add language to create a program that would authorize WHEDA to approve the (housing development) projects that qualify for the sales and use tax exemption. DOR memo indicated *"this (change) will give certainty to everyone seeking an exemption and will make auditing more efficient."*

- **WHEDA Certification of Qualified Workforce Housing Development Projects:**
 - *(For taxable years beginning after 12.31.19 ?)* WHEDA must certify individuals as eligible to claim the sales tax exemption created in the bill, if the authority determines that the person is constructing a workforce housing development as defined under the legislation [s. 77.54 (69)].
 - No person may claim the tax exemption without first being certified by the authority.
 - The builder must submit the certification application to WHEDA for approval.
WHEDA is not sure how to draft this, but Bob and WHEDA agreed the intent is to make the application as short and simple as possible – maybe a statement by the builder that the project is “workforce housing”; the location of the project; and the monthly cost of the housing as defined in s. 16.301 (3) (a) and (b) to the initial occupant.
 - “Pocket approval” process - WHEDA has 15 business days to reject the application. After 15 business days, the certification is automatically approved.

2. As Bob agreed to create a program under which WHEDA approves the eligible projects, he consulted with WHEDA and under new LRB they agreed WHEDA would be responsible for determining the meaning of the terms “expected,” “intended,” and “public use.”

- Bob consulted with WHEDA and they agreed **“expected” and “intended”** terms are subjective and the current definitions **are fine as is.**
- Bob consulted with WHEDA and they agreed to expanding the definition of “public use.”
 - Currently the bill indicates property for public use includes sidewalks and sewer lines.

The newly expanded “public use” definition will be:

This subsection does not apply to property and services acquired for or used in the construction or development of property for public use within the development, including but not limited to sidewalks, wastewater collection and treatment systems, drinking water systems, storm sewers, utility extensions, telecommunications infrastructure, streets, roads, bridges and parking ramps.

Lunder, Erika

From: Riske, Laura
Sent: Friday, December 20, 2019 11:40 AM
To: Lunder, Erika
Cc: Kulp, Bob; Riske, Laura; Schultz, Jeff; Schwerbel, Steven
Subject: FW: Laura Rep Kulp workforce
Attachments: DOR Technical Memo 2128-1.pdf; 19-2128_1.pdf; New LRB Workforce House Sales Tax Exemption Drafting Instructions 12.20.19.pdf

Importance: High

Hi Erika – Per our discussion yesterday please see attached drafting instructions for the new LRB. For your reference, I've attached the old LRB 19-2128 and the DOR Tech Memo. Please call with any questions. Tx-Laura

From: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Sent: Thursday, November 14, 2019 12:55 PM
To: Riske, Laura <Laura.Riske@legis.wisconsin.gov>
Subject: Technical memo

Hello,

As a follow-up to our discussion, here are some thoughts on the technical memo.

With respect to item 1, DOR recommends that the bill create a program under which “an approved housing authority” would approve the projects that qualify for the sales and use tax exemption.

1. After discussion with a colleague, it is not clear to me if DOR means WHEDA or local housing authorities. Not all communities have a local housing authority (see, e.g., [here](#)).
2. Further clarity regarding the issue described in par. 1(a) might be useful. Based on the brief description, it is not clear how the issue necessarily connects to the recommendation. In order to fully assess the issue and determine whether you want to modify the draft, it might be helpful to know if DOR's recommendation is simply intended to generally make the exemption easier to administer or if it is intended to resolve a more specific issue. Further clarity would also assist in identifying whether other options exist besides DOR's recommendation.
3. Further clarity regarding DOR's phrase “approve qualifying projects” might be useful. At a minimum, the phrase seems to mean that the housing authority would determine whether a development is a “qualified housing development.” It might be helpful to ask if DOR intended the phrase to capture more than that.

If you decide to adopt DOR's recommendation, there are existing programs that could serve as a legislative model. Currently, WHEDA and WEDC certify eligibility for various tax credits. For example, WHEDA certifies taxpayers for the low-income housing credit and WEDC certifies qualified new businesses for the angel investment credit. While these programs vary considerably and none is exactly on point, they provide a general legislative framework for creating the type of program DOR recommends.

With respect to items 2 and 3, the language at issue was included in the drafting instructions, so the threshold question is whether this language captures your intent or if you would like to modify it. If you decide to modify the draft, one item to consider is whether there are objective standards that capture the intent behind the “expected” and “intended” language. Finally, it appears that if you were to create a program under which WHEDA or a local housing authority

approved the projects, WHEDA or the housing authority would be responsible for determining the meaning of these terms. Thus, it might be useful to ask whether WHEDA would want changes to the draft's language.

Please do not hesitate to contact me with any questions or if you'd like to discuss these issues further.

Sincerely,

Erika Lunder
Legislative Attorney
Legislative Reference Bureau
(608) 504-5819

From: Riske, Laura <Laura.Riske@legis.wisconsin.gov>
Sent: Wednesday, November 13, 2019 3:53 PM
To: Michael Welsh <mwelsh@weda.org>
Cc: Riske, Laura <Laura.Riske@legis.wisconsin.gov>
Subject: Laura Rep Kulp workforce

Hi Michael –

Attached is DOR Tech memo I received this afternoon related to 2128/1 (workforce). If you would be able to review and let me know your thoughts that would be helpful. After we talk I will then reach out to drafter for her thoughts.

I gave attached 2128/1 DOR tech memo to Rep Quinn/Sen Testin for review too.

I alerted Rp Summerfield's office due to memo we need to pause until we have chance to review. Reps office let me know they also got DOR tech memo on one of their LRBs, so they need to review their's & pause too.

Tx!

Laura Riske
Research Assistant,
Committee Clerk, Assembly Transportation Committee
Office of Representative Bob Kulp – 69th Assembly District
Office: 608.267.0280

Richard A. Champagne, Chief and General Counsel
Legal 608-266-3561 • Information 608-266-0341



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Madison, WI 53701-2037 • www.legis.state.wi.us/lrb

MEMORANDUM

TO Representative Kulp
FROM LRB - Legal Services
DATE November 13, 2019
SUBJECT Technical memorandum to **2019 unIntroduced** (LRB-2128/1) by DOR

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact the LRB drafter of your proposal.

LRB DRAFTER: Erika Lunder, Legislative Attorney, (608) 504-5819

MEMORANDUM

November 12, 2019

TO: Erika Lunder
FROM: Bob Schmidt
Department of Revenue

SUBJECT: Technical Memorandum on 2019 LRB 2128 relating to: A sales and use tax exemption for the sale of building materials, supplies, equipment, and landscaping and lawn maintenance services if the property or service is acquired solely for, or used solely in, the development or construction of a workforce housing development.

The department is still in the process of reviewing this legislation, but would provide the following technical corrections:

1. DOR does not possess or have a mechanism to collect data necessary to administer the sales tax exemption as drafted.
 - a. The exemption may be claimed by owners, lessees, contractors, subcontractors, or builders of workforce housing development projects. DOR will not know who is claiming the exemption unless reviewing sales records and exemption certificates of retailers that have sold to such owners, lessees, contractors, subcontractors, or builders.

Recommendation: Authorize an approved housing authority to approve qualifying projects. This will give certainty to everyone seeking an exemption and will make auditing more efficient. Other states proposing similar exemptions approve the exemption by certifying a project or entity.

2. The department suggests the author modify the bill to clarify "expected" and "intended." As drafted, the expectations and/or intent are not tied to any certification or approval made by a government agency.
3. The department suggests the author modify the bill to define "public use."

As written, the exemption does not apply to property and services acquired for or used in the construction or development of property for public use. The bill indicates that property for public use includes sidewalks and sewer lines. It is not clear what public use property is, and DOR will need to provide guidance.

If you have any questions regarding this technical memorandum, please contact Travis Arthur at (608) 266-8565.



(PI)

gs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN: 1/9

DUE: 1/9

SA
SC
gc

1 AN ACT ...; relating to: creating a sales tax exemption for materials used to
2 construct workforce housing developments.

Analysis by the Legislative Reference Bureau

This bill creates a sales and use tax exemption for the sale of building materials, supplies, equipment, and landscaping and lawn maintenance services if the property or service is acquired solely for, or used solely in, the construction of a workforce housing development. The bill defines "workforce housing development" to mean a housing development in Wisconsin that meets all of the following conditions:

1. It consists of land proposed for newly platted residential use.
2. The housing costs of the development's residential units do not exceed, or are not expected to exceed, 30 percent of the median household income for the county in which the development is located.
3. The residential units are intended for initial occupancy by households whose income is at least 60 percent, but not more than 120 percent, of the county's median household income.

Under the bill, the tax exemption may only be claimed by a person holding an exemption certificate issued by the Wisconsin Housing and Economic Development Authority. In order to receive an exemption certificate, a person must submit an application to WHEDA that includes a description of the housing development, certification that the development is a workforce housing development, and documentation of the housing costs for the development's initial occupants.

The bill requires WHEDA to issue an exemption certificate to a person who submits a completed application if WHEDA determines that the person is

and

for households occupying

constructing a workforce housing development. WHEDA must notify the person of its determination no later than 15 days after receiving the person's application. If WHEDA does not notify the applicant within the 15 days, the application is automatically approved and WHEDA must issue an exemption certificate to the person.

Under the bill, the sales and use tax exemption may not be claimed for property and services acquired for or used in the construction of property for public use within the development. The bill defines "property for public use" to include sidewalks, wastewater collection and treatment systems, drinking water systems, storm sewers, utility extensions, telecommunications infrastructure, streets, roads, bridges, and parking ramps.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

^ X

1 **SECTION 1.** 77.54 (69) of the statutes is created to read:

2 77.54 (69) The sales price from the sale of building materials, supplies, and
3 equipment and the sale of services described in s. 77.52 (2) (a) 20., and the storage,
4 use, or other consumption of the same property and services, to a person holding an
5 exemption certificate issued under s. 234.47 if the property or service is acquired
6 solely for, or used solely in, the construction of a workforce housing development, as
7 defined in s. 234.47⁽¹⁾(d). This subsection does not apply to property and services
8 acquired for or used in the construction of property for public use, as defined in s.
9 234.47⁽¹⁾(c), within the development.

10 **SECTION 2.** 234.47 of the statutes is created to read:

11 **234.47 Workforce housing sales tax exemption. (1) DEFINITIONS.** In this
12 section:

1 (a) "Exception certificate" means a certificate issued by the authority that
 2 authorizes the person holding the certificate to claim the tax exemption under s.
 3 77.54 (69). *g for the each household occupying*

4 (b) "Housing costs" has the meaning given in s. 16.301 (3) (a) and (b).

5 (c) "Property for public use" includes sidewalks, wastewater collection and
 6 treatment systems, drinking water systems, storm sewers, utility extensions,
 7 telecommunications infrastructure, streets, roads, bridges, and parking ramps.

8 (d) "Workforce housing development" means a housing development in this
 9 state that meets all of the following conditions:

10 1. It consists of land proposed for newly platted residential use. *g do*

11 2. The housing costs *of each* residential unit in the development *may* not
 12 exceed, or *be* expected to exceed, 30 percent of the median household income in the
 13 county in which the development is located, based on the American community
 14 survey 5-year estimates produced by the U.S. bureau of the census.

15 3. The residential units in the development are intended for initial occupancy
 16 by individuals whose household income is at least 60 percent, but not more than 120
 17 percent, of *the* median household income in the county in which the *development* housing is located,
 18 based on the American community survey 5-year estimates produced by the U.S.
 19 bureau of the census.

20 (2) CERTIFICATION TO CLAIM TAX EXEMPTION. The authority shall establish and
 21 administer a program to issue exemption certificates for purposes of claiming the tax
 22 exemption under s. 77.54 (69). A person who wishes to be issued an exemption
 23 certificate shall apply to the authority on a form prescribed by the authority. The
 24 application shall contain all of the following: ✓

25 1. A description of the project, including its location.

g
(a)

1 **(2)** A certification by the person that the project is a workforce housing
 2 development.

3 **(3)** Documentation showing the housing costs, or expected housing costs, of the
 4 initial occupant of each residential unit in the development.

5 **(3) APPROVAL.** The authority shall issue an exemption certificate to a person
 6 who submits a completed application under sub. (2) if the authority determines that
 7 the person is constructing a workforce housing development. No later than 15 days
 8 after receipt of an application under sub. (2), the authority shall determine whether
 9 to approve the application, notify the applicant of the authority's determination, and,
 10 if the application is approved, issue an exemption certificate to the applicant. If the
 11 authority does not notify the applicant within 15 days of receipt of the application,
 12 the application shall be approved and the authority shall issue the person an
 13 exemption certificate.

14 **(4) PUBLIC USE PROPERTY.** A person may not use the exemption certificate issued
 15 under sub. **(2)** to claim an exemption under s. 77.54 (69) for property and services
 16 acquired for or used in the construction of property for public use within the
 17 development.

18 **(5) INFORMATION SHARING.** The authority shall provide to the department of
 19 revenue a copy of each exemption certificate issued under **par. (3)** and, upon request
 20 by the department, a copy of any application submitted under **par. (2)**.

21 **(6) POLICIES AND PROCEDURES.** The authority, in consultation with the
 22 department of revenue, shall establish policies and procedures to administer this
 23 section.



Laura (Kulp)

1/14

convert 5204 to 11 - no jacket

LRB: "development" language for public use definition



1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1/14

SA
SC

1 AN ACT *to create* 77.54 (69) and 234.47 of the statutes; **relating to:** creating a
2 sales tax exemption for materials used to construct workforce housing
3 developments.

Analysis by the Legislative Reference Bureau

This bill creates a sales and use tax exemption for the sale of building materials, supplies, and equipment and landscaping and lawn maintenance services if the property or service is acquired solely for, or used solely in, the construction or development of a workforce housing development. The bill defines "workforce housing development" to mean a housing development in Wisconsin that meets all of the following conditions:

1. It consists of land proposed for newly platted residential use.
2. The housing costs for households occupying the development's residential units do not exceed, or are not expected to exceed, 30 percent of the median household income for the county in which the development is located.
3. The residential units are intended for initial occupancy by households whose income is at least 60 percent, but not more than 120 percent, of the county's median household income.

Under the bill, the tax exemption may only be claimed by a person holding an exemption certificate issued by the Wisconsin Housing and Economic Development Authority. In order to receive an exemption certificate, a person must submit an application to WHEDA that includes a description of the housing development, certification that the development is a workforce housing development, and documentation of the housing costs for the development's initial occupants.

The bill requires WHEDA to issue an exemption certificate to a person who submits a completed application if WHEDA determines that the person is constructing or developing a workforce housing development. WHEDA must notify the person of its determination no later than 15 days after receiving the person's application. If WHEDA does not notify the applicant within the 15 days, the application is automatically approved and WHEDA must issue an exemption certificate to the person.

or development Under the bill, the sales and use tax exemption may not be claimed for property and services acquired for or used in the construction of property for public use within the development. The bill defines "property for public use" to include sidewalks, wastewater collection and treatment systems, drinking water systems, storm sewers, utility extensions, telecommunications infrastructure, streets, roads, bridges, and parking ramps.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.54 (69) of the statutes is created to read:

2 77.54 (69) The sales price from the sale of building materials, supplies, and
3 equipment and the sale of services described in s. 77.52 (2) (a) 20., and the storage,
4 use, or other consumption of the same property and services, to a person holding an
5 exemption certificate issued under s. 234.47 if the property or service is acquired
6 solely for, or used solely in, the construction or development of a workforce housing
7 development, as defined in s. 234.47 (1) (d). This subsection does not apply to
8 property and services acquired for or used in the construction of property for public
9 use, as defined in s. 234.47 (1) (c), within the development. *or development*

10 **SECTION 2.** 234.47 of the statutes is created to read:

11 **234.47 Workforce housing sales tax exemption.** (1) DEFINITIONS. In this
12 section:

1 (a) "Exemption certificate" means a certificate issued by the authority that
2 authorizes the person holding the certificate to claim the tax exemption under s.
3 77.54 (69).

4 (b) "Housing costs" has the meaning given in s. 16.301 (3) (a) and (b).

5 (c) "Property for public use" includes sidewalks, wastewater collection and
6 treatment systems, drinking water systems, storm sewers, utility extensions,
7 telecommunications infrastructure, streets, roads, bridges, and parking ramps.

8 (d) "Workforce housing development" means a housing development in this
9 state that meets all of the following conditions:

10 1. It consists of land proposed for newly platted residential use.

11 2. The housing costs for each household occupying a residential unit in the
12 development do not exceed, or are not expected to exceed, 30 percent of the median
13 household income in the county in which the development is located, based on the
14 American community survey 5-year estimates produced by the U.S. bureau of the
15 census.

16 3. The residential units in the development are intended for initial occupancy
17 by individuals whose household income is at least 60 percent, but not more than 120
18 percent, of the median household income in the county in which the development is
19 located, based on the American community survey 5-year estimates produced by the
20 U.S. bureau of the census.

21 **(2) CERTIFICATION TO CLAIM TAX EXEMPTION.** The authority shall establish and
22 administer a program to issue exemption certificates for purposes of claiming the tax
23 exemption under s. 77.54 (69). A person who wishes to be issued an exemption
24 certificate shall apply to the authority on a form prescribed by the authority. The
25 application shall contain all of the following:

1 (a) A description of the project, including its location.

2 (b) A certification by the person that the project is a workforce housing
3 development.

4 (c) Documentation showing the housing costs, or expected housing costs, of the
5 initial occupant of each residential unit in the development.

6 (3) APPROVAL. The authority shall issue an exemption certificate to a person
7 who submits a completed application under sub. (2) if the authority determines that
8 the person is constructing or developing a workforce housing development. No later
9 than 15 days after receipt of an application under sub. (2), the authority shall
10 determine whether to approve the application, notify the applicant of the authority's
11 determination, and, if the application is approved, issue an exemption certificate to
12 the applicant. If the authority does not notify the applicant within 15 days of receipt
13 of the application, the application shall be approved and the authority shall issue the
14 person an exemption certificate.

15 (4) PUBLIC USE PROPERTY. A person may not use the exemption certificate issued
16 under sub. (3) to claim an exemption under s. 77.54 (69) for property and services
17 acquired for or used in the construction of property for public use within the
18 workforce housing development. *or development*

19 (5) INFORMATION SHARING. The authority shall provide to the department of
20 revenue a copy of each exemption certificate issued under sub. (3) and, upon request
21 by the department, a copy of any application submitted under sub. (2).

22 (6) POLICIES AND PROCEDURES. The authority, in consultation with the
23 department of revenue, shall establish policies and procedures to administer this
24 section.

25 (END)

Walker, Dan

From: Riske, Laura
Sent: Tuesday, January 14, 2020 3:42 PM
To: LRB.Legal
Cc: Riske, Laura
Subject: Draft Review: LRB -5204/1

Please Jacket LRB -5204/1 for the ASSEMBLY immediately