# HOUSE BILL REPORT
# HB 3070

**As Reported by House Committee On:**
Housing

**Title:** An act relating to increasing nonprofit housing development capacity.

**Brief Description:** Increasing nonprofit housing development capacity.

**Sponsors:** Representatives Miloscia, Hasegawa, Chase and Santos.

**Brief History:**
**Committee Activity:**
Housing: 1/24/06, 2/2/06 [DPS].

**Brief Summary of Substitute Bill**

- Increases the debt limit of the Housing Finance Commission from $3 billion to $4 billion.
- Authorizes the Housing Finance Commission to establish a multiunit residential building construction liability revolving fund program for non-profit housing developers.

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**HOUSE COMMITTEE ON HOUSING**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Miloscia, Chair; Springer, Vice Chair; McCune, Ormsby, Pettigrew and Sells.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Holmquist, Ranking Minority Member; Dunn, Assistant Ranking Minority Member and Schindler.

**Staff:** Robyn Dupuis (786-7166).

**Background:**

The Housing Finance Commission (HFC) was created by the Legislature in 1983, however it is not a state agency. The HFC does not receive state funds, it does not lend state funds, and the state is not liable for any of the HFC's debt. The HFC acts as a financial conduit of federal funds and has the authority to issue bonds for the development of affordable housing and non-profit facilities. To date, the HFC has financed more than 112,000 affordable housing units and elderly beds across the state and 103 nonprofit facilities.

**HFC's Debt Limit**

The HFC's original debt limit in 1983 was $1 billion. It was raised to $2 billion in 1985 and to $3 billion in 1999. The debt limit is the total amount of debt HFC is authorized to have outstanding at any one time. As of January of this year, the HFC's outstanding debt reached $2.7 billion. Once the HFC reaches the $3 billion limit, it must stop issuing debt to finance additional affordable housing and nonprofit facilities.

**Multiunit Residential Construction Liability Insurance**

The Washington Condominium Act (WCA) controls the creation, construction, sale, financing, management, and termination of condominiums. The WCA contains special rules regarding express and implied warranty protection for condominium purchasers. These provisions are unique to condominium construction and do not apply generally to other kinds of construction. Express warranties are assertions that are made by the declarant with respect to a condominium and that are relied upon by a buyer. Implied warranties are statutorily created in the WCA and include warranties of quality that the units and common areas are free from defective materials, built in accordance with sound engineering and construction standards, and built in a workmanlike manner, amongst others. These warranty provisions may be seen as providing extra protection against defective construction for condominium purchasers, as compared to purchasers of other buildings. In a non-condominium construction defect case, there are no statutory grounds for a lawsuit. Injured claimants rely instead on common law principles of tort and contract. Although a condominium purchaser may have more grounds upon which to sue, he or she has a shorter time in which to bring a lawsuit than does the purchaser of a non-condominium building.

Lawsuits under the WCA that are based on an alleged breach of one of the statutory warranties must be brought within four years. This four year period begins with respect to a condo unit when the first owner of the unit takes possession. With respect to common elements of the condo, the four years begins at the latter of when the first unit is sold or when the common element is completed or added to the condominium. The four years begins to run at those times regardless of whether an owner knows or reasonably should have known of the defect.

In suits against builders for construction defects in non-condo cases, however, a six year "statute of repose" applies to all claims. This period of repose operates in conjunction with various statutes of limitations, and also with the so-called discovery rule in some cases. The six years begin after substantial completion of construction. Depending on the nature of the case and the applicable statute of limitations, a claimant may have more than six years to bring a claim for a defect in a non-condominium construction defect case.

According to stakeholders, lenders require additional construction liability insurance for condominium projects, including coverage for construction defects discovered after construction is completed, and condominium liability insurance is typically more expensive than general construction liability insurance.

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**Summary of Substitute Bill:**

Increases the HFC debt limit from $3 billion to $4 billion.

The Housing Finance Commission (HFC) is authorized to establish the multiunit residential building construction liability revolving fund program for non-profit housing developers.

The HFC may:

(a) establish criteria for the eligibility of projects;
(b) establish the scope of coverage and other operating policies and procedures; and
(c) establish premiums and provide for the reimbursement of premiums, to the extent the funds are not required for the administration of the program.

**Substitute Bill Compared to Original Bill:**

The substitute bill lowers the allowable debt limit for the HFC to $4 billion from the $5 billion allowed in the original bill. The substitute bill does not include a section limiting the allocation of low-income housing tax credits to non-profit organizations. The substitute bill authorizes the HFC, instead of the Department of Community, Trade, and Economic Development, with establishing the multiunit residential building construction liability revolving fund program for non-profit housing developers, and gives the HFC the authority to establish criteria for the eligibility of projects, determine the scope of coverage, establish premiums, and provide for the reimbursement of premiums when appropriate and feasible.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2006.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (With concerns on original bill)

**Bond Cap Increase**
The price of housing and housing production has escalated in the last few years due to the economy and natural disasters like Hurricane Katrina. The HFC has an outstanding debt of approximately $2.7 billion and once it reaches its statutory debt limit of $3 billion it will not be able to finance additional affordable housing and non-profit facilities. There is a great need for affordable housing, particularly for the elderly population which is expected to grow 49 percent between 2005 and 2015. Anticipated elderly housing projects alone will cause the HFC to exceed its debt limit. The HFC has issued a total of $6.8 billion of debt and has paid off $4.8 billion. The HFC is committed to continuing to improve its Quality Management Program and is preparing an application to the Washington State Quality Award program.

**Revolving Loan Fund**

There is a recognized need for something to be done to address the high cost of condominium liability insurance. The HFC is willing to take the lead and develop and administer some type of fund program. It's not necessary to put the creation of this program in statute, nor is it necessary to codify what would only be one-time appropriations from the DCTED or transfers of funds from the HFC.

**Low Income Housing Tax Credits**
There is an administrative process whereby the HFC sets and periodically revises guidelines to prioritize what types of entities and projects are awarded tax credits. The HFC is committed to reviewing and considering strategies to promote non-profit capacity and also will look at the possible implications of limiting the participation of the for-profit sector. It's difficult, due to the complex nature of the tax credit program, to achieve what the sponsors of this bill seem to desire though statutory changes. Non-profit organizations receive the majority of the tax credits, however, particularly in rural areas, for-profit developers play an important role. Often there are not enough resources (due to limited state funding through the Housing Trust Fund and limited private foundation dollars) for non-profits to be able to completely fund a development in rural areas, whereas for profit corporations take advantage of private capital and financing. Sometimes the missions of the only non-profit organizations in a rural area do not allow them to develop the affordable housing for a population that a for-profit proposes. For example, some rural non-profits are limited to developing only farm worker housing. The current language in the bill would prohibit not only for-profit organizations from receiving tax credits, but also housing authorities and public development authorities.

**Testimony Against:** None.

**Persons Testifying:** (With concerns on original bill) Kim Herman, Washington State Housing Finance Commission; Chris Pegg, Longview Housing Authority; Tom Tierney, Seattle Housing Authority; and Dan Watson, King County Housing Authority.

**Persons Signed In To Testify But Not Testifying:** None.