**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

## Housing Committee

# HB 3070

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

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

**Brief Summary of Bill**

- Increases the debt limit of the Housing Finance Commission from $3 billion to $5 billion.
- Limits the allocation of low-income housing tax credits to non-profit organizations.
- Requires the Department of Community, Trade, and Economic Development (DCTED) to implement a multiunit residential building construction liability revolving fund program.

**Hearing Date:** 1/24/06

**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 commission's original debt limit in1983 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 the commission is authorized to have outstanding at any one time. As of January of this year, the commission's outstanding debt reached $2.7 billion. Once the commission reaches the $3 billion limit, it must stop issuing debt to finance additional affordable housing and nonprofit facilities.

**Low-Income Housing Tax Credits (LIHTC)**
The 1986 Tax Reform Act created the federal Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code to assist in the development of low-income rental housing. The HFC is authorized to allocate LIHTC's for residential rental property in Washington. The LIHTC is available to owners of qualified buildings and projects that meet low-income occupancy and rent restrictions. Generally, the ownership structure of LIHTC

transactions involves a Limited Partnership consisting of a general partner and a limited partner. The general partner can be a for-profit, a non-profit, or a governmental entity such as a housing authority. The general partner sells the LIHTC (and 99 percent of the ownership of the entity) to the limited partner or investor. In return for the credit which can be used against the investor's federal tax obligations, the investor contributes equity to help finance the project.

The HFC uses an allocation point system, as well as credit set-asides, to decide upon the allocation of LIHTCs. Priority for LIHTC are given to projects which meet the following criteria, amongst others:

- Serving the lowest income populations for the longest period of time.
- Serving special needs populations (homeless, elderly, disabled, farmworker).
- Rehabilitation of existing buildings.
- Preservation of existing affordable housing.

There exist within the HFC LIHTC Program several set-asides which are not in statute and may change in response to changing market conditions and housing needs throughout the state. The current set-asides include:

Qualified Nonprofit Organization 10%
Rural Housing Projects 15%
Rural Development Projects 5%
Hope VI Projects 20% (2005-2009)

Note: a non-profit organization set-aside of 15 percent and for-profit set-aside of 15 percent were temporarily suspended to enable the HFC to assist in financing two large HOPE VI projects in King and Pierce counties.

Projects which meet the conditions for a LIHTC set-aside category will only compete with other Projects in that Credit Set-Aside category in the initial application ranking process. Applicants/ Owners must make a commitment for a 12 year minimum Additional Low-Income Housing Use Period in order to be eligible for a LIHTC set-aside category.

LIHTC are available to for-profit and non-profit developers, however, over the last five years, 74 percent of the competitive credit has gone to non-profit developers which often are able to meet more of the priority criteria considerations.

**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, however, 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 later 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.

For a variety of reasons, lenders appear to require additional construction liability insurance for condominium projects, including coverage for construction defects discovered after construction is complete. Condominium liability insurance has been more expensive than general construction liability insurance.

**Summary of Bill:**

The HFC debt limit is $5 billion.

The HFC may only allocate LIHTCs to non-profit organizations.

The DCTED must establish a multiunit residential building construction liability revolving fund program for nonprofit organizations that construct or rehabilitate condominiums or other multiunit residential buildings. This revolving fund will pay for claims made by members of the program to cover all liability associated with the construction of a multiunit residential building and to cover construction defects that arise within seven years after completion of the construction. A premium will be assessed on each member not to exceed $250 per unit. If a member does not make a claim for a project within the seven year period, all premiums associated with that project will be refunded. The DCTED will develop policies and procedures for this program.

This program will be capitalized with a $1 million appropriation from the Housing Trust Fund and a $1 million transfer from the HFC.

**Appropriation:** None.

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

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