
HOUSE BILL 3070

State of Washington 59th Legislature 2006 Regular Session

By Representatives Miloscia, Hasegawa, Chase and Santos

Read first time 01/19/2006. Referred to Committee on Housing.

1 AN ACT Relating to increasing nonprofit housing development
2 capacity; amending RCW 43.180.160, 43.180.080, and 43.180.050; adding
3 new sections to chapter 43.180 RCW; adding a new section to chapter
4 43.63A RCW; creating a new section; and making an appropriation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.180 RCW
7 to read as follows:

8 The legislature finds that nonprofit organizations that develop
9 affordable housing for low-income households are critical in addressing
10 the growing affordable housing crisis in Washington state. Nonprofit
11 housing developers are mission-driven entities that prioritize the
12 needs and interests of residents over maximizing profits and,
13 therefore, have a vested interest in developing, maintaining, and
14 preserving safe, quality, and affordable housing options for low-income
15 and indigent individuals and families.

16 The state also finds, however, that organizational capacity and
17 housing development experience among nonprofit organizations is
18 inconsistent across the state. This inconsistency is reflected in the

1 relative lack of nonprofit housing developers that exist in rural areas
2 of the state.

3 The legislature finds that many nonprofit housing developers choose
4 not to develop condominiums and other multiunit residential buildings
5 because private market insurance rates to cover the construction
6 liability insurance required for such projects by many lenders is
7 unaffordable. Construction liability insurance costs are particularly
8 cost prohibitive for nonprofit organizations that, rather than selling
9 or reselling individual units when construction is complete and thereby
10 recouping the cost of the construction insurance, typically retain
11 ownership of units for the purpose of maintaining affordability for
12 low-income or indigent households.

13 Given the nonprofit status and focus on serving low-income and
14 indigent households over the long term, nonprofit housing developers
15 are unique and critical to ensuring that low-income and indigent
16 households have the opportunity to obtain and retain stable housing in
17 Washington.

18 Therefore, it is the intent of the legislature to establish
19 policies and provide incentives that will increase the number of
20 nonprofit housing developers that create affordable housing
21 opportunities for low-income and indigent households, and which will
22 simultaneously increase the ability of existing nonprofit housing
23 developers to expand housing development programs and to sustain the
24 resulting affordable housing units over the long term.

25 **Sec. 2.** RCW 43.180.160 and 1999 c 131 s 2 are each amended to read
26 as follows:

27 The total amount of outstanding indebtedness of the commission may
28 not exceed (~~three~~) five billion dollars at any time. The calculation
29 of outstanding indebtedness shall include the initial principal amount
30 of an issue and shall not include interest that is either currently
31 payable or that accrues as a part of the face amount of an issue
32 payable at maturity or earlier redemption. Outstanding indebtedness
33 shall not include notes or bonds as to which the obligation of the
34 commission has been satisfied and discharged by refunding or for which
35 payment has been provided by reserves or otherwise.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.63A RCW
2 to read as follows:

3 The department of community, trade, and economic development shall
4 establish a multiunit residential building construction liability
5 revolving fund program for nonprofit organizations that construct or
6 rehabilitate condominiums or other multiunit residential buildings, as
7 defined in RCW 64.55.010.

8 (1) The multiunit residential building construction liability
9 revolving fund program shall:

10 (a) Be available to an organization that meets the following
11 criteria:

12 (i) The organization must be defined as a nonprofit organization
13 under section 501(c)(3) of the internal revenue code or similar
14 successor provisions;

15 (ii) The organization must have developed or be in the process or
16 planning stages of developing a multiunit residential building;

17 (iii) The organization must have a building permit for the
18 construction or rehabilitative reconstruction of a multiunit
19 residential building; and

20 (iv) The organization must meet criteria for eligibility and
21 membership established in subsection (3) of this section;

22 (b) Pay for a claim made by a member of the revolving fund program
23 to cover all liability associated with the construction of a multiunit
24 residential building and to cover construction defects that arise
25 within seven years after the completion date of the multiunit
26 residential building, excluding any liability during and after
27 construction that is covered by a revolving fund program member's
28 general liability or corporate and property liability insurance policy;

29 (c) Assess a premium on each member of the revolving fund program
30 for each multiunit residential building unit for which coverage for
31 construction liability is sought through the revolving fund program.
32 The formula and schedule for premiums assessed through the revolving
33 fund program shall be developed by the department, except that the cost
34 of the premium per unit shall not exceed two hundred fifty dollars.

35 (2) If a member of the revolving fund program does not make a claim
36 for payment from the revolving fund program for seven years after the
37 completion date of a multiunit residential building covered by the
38 revolving fund program, all premiums assessed on the member by the

1 revolving fund program that are associated with the multiunit
2 residential building shall be refunded to the member no later than six
3 months after the seventh year anniversary of the completion date of the
4 multiunit residential building.

5 (3) The department shall develop criteria to determine eligibility,
6 membership, scope of coverage, and other policies and operating
7 procedures for the revolving fund program established by this act. The
8 department may contract with an underwriter to develop these policies.
9 The department may consult with the office of financial management's
10 risk management office for the development and administration of this
11 program.

12 (4) Premiums collected under this act shall be deposited into the
13 multiunit residential building construction liability revolving fund
14 program account created in section 4 of this act.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.180 RCW
16 to read as follows:

17 The multiunit residential building construction liability revolving
18 fund program account is created in the custody of the state treasurer.
19 All receipts from appropriations and transfers made in sections 5 and
20 6 of this act as well as premiums collected by members of the multiunit
21 residential building construction liability revolving fund program must
22 be deposited in the account. Expenditures from the account may be used
23 only to pay claims associated with a multiunit residential building
24 covered by the multiunit residential building construction liability
25 revolving fund program. Only the director of the department of
26 community, trade, and economic development, or the director's designee
27 may authorize expenditures from the account. The account is subject to
28 the allotment procedures under chapter 43.88 RCW, but an appropriation
29 is not required for expenditures.

30 NEW SECTION. **Sec. 5.** The sum of one million dollars, or as much
31 thereof as may be necessary, is appropriated for the fiscal year ending
32 June 30, 2007, from the housing trust fund account to the multiunit
33 residential building construction liability revolving fund program
34 account for the purposes of this act.

1 NEW SECTION. **Sec. 6.** The housing finance commission shall
2 transfer the sum of one million dollars for the fiscal year ending June
3 30, 2007, to the multiunit residential building construction liability
4 revolving fund program account for the purposes of this act.

5 **Sec. 7.** RCW 43.180.080 and 1997 c 163 s 1 are each amended to read
6 as follows:

7 In addition to other powers and duties specified in this chapter,
8 the commission may:

9 (1) Establish in resolutions relating to any issuance of bonds, or
10 in any financing documents relating to such issuance, such standards
11 and requirements applicable to the purchase of mortgages and mortgage
12 loans or the making of loans to mortgage lenders as the commission
13 deems necessary or desirable, including but not limited to: (a) The
14 time within which mortgage lenders must make commitments and
15 disbursements for mortgages or mortgage loans; (b) the location and
16 other characteristics of single-family housing or multifamily housing
17 to be financed by mortgages and mortgage loans; (c) the terms and
18 conditions of mortgages and mortgage loans to be acquired; (d) the
19 amounts and types of insurance coverage required on mortgages, mortgage
20 loans, and bonds; (e) the representations and warranties of mortgage
21 lenders confirming compliance with such standards and requirements; (f)
22 restrictions as to interest rate and other terms of mortgages or
23 mortgage loans or the return realized therefrom by mortgage lenders;
24 (g) the type and amount of collateral security to be provided to assure
25 repayment of any loans from the commission and to assure repayment of
26 bonds; and (h) any other matters related to the purchase of mortgages
27 or mortgage loans or the making of loans to lending institutions as
28 shall be deemed relevant by the commission;

29 (2) Sue and be sued in its own name;

30 (3) Make and execute contracts and all other instruments necessary
31 or convenient for the exercise of its purposes or powers, including but
32 not limited to contracts or agreements for the origination, servicing,
33 and administration of mortgages or mortgage loans, and the borrowing of
34 money;

35 (4) Procure such insurance, including but not limited to insurance:
36 (a) Against any loss in connection with its property and other assets,
37 including but not limited to mortgages or mortgage loans, in such

1 amounts and from such insurers as the commission deems desirable, and
2 (b) to indemnify members of the commission for acts done in the course
3 of their duties;

4 (5) Provide for the investment of any funds, including funds held
5 in reserve, not required for immediate disbursement, and provide for
6 the selection of investments;

7 (6) Fix, revise, and collect fees and charges in connection with
8 the investigation and financing of housing or in connection with
9 assignments, contracts, purchases of mortgages or mortgage loans, or
10 any other actions permitted under this chapter or by the commission;
11 and receive grants and contributions;

12 (7) Make such expenditures as are appropriate for paying the
13 administrative costs of the commission and for carrying out the
14 provisions of this chapter. For the fiscal year ending June 30, 2007,
15 an appropriate expenditure shall include a transfer of funds to the
16 multiunit residential building construction liability revolving fund
17 program account created in section 4 of this act. These expenditures
18 may be made only from funds consisting of the commission's receipts
19 from fees and charges, grants and contributions, the proceeds of bonds
20 issued by the commission, and other revenues; these expenditures shall
21 not be made from funds of the state of Washington;

22 (8) Establish such special funds, and controls on deposits to and
23 disbursements from them, as it finds convenient for the implementation
24 of this chapter;

25 (9) Conduct such investigations and feasibility studies as it deems
26 appropriate;

27 (10) Proceed with foreclosure actions or accept deeds in lieu of
28 foreclosure together with the assignments of leases and rentals
29 incidental thereto. Any properties acquired by the commission through
30 such actions shall be sold as soon as practicable through persons
31 licensed under chapter 18.85 RCW or at public auction, or by transfer
32 to a public agency. In preparation for the disposition of the
33 properties, the commission may own, lease, clear, construct,
34 reconstruct, rehabilitate, repair, maintain, manage, operate, assign,
35 or encumber the properties;

36 (11) Take assignments of leases and rentals;

37 (12) Subject to any provisions of the commission's contracts with
38 the holders of obligations of the commission, consent to any

1 modification with respect to rate of interest, time, and payment of any
2 installment of principal or interest or any other term of any contract,
3 mortgage, mortgage loan, mortgage loan commitment, contract, or
4 agreement of any kind;

5 (13) Subject to provisions of the commission's contracts with the
6 holders of bonds, permit the reduction of rental or carrying charges to
7 persons unable to pay the regular rent or schedule of charges if, by
8 reason of other income of the commission or by reason of payment by any
9 department, agency, or instrumentality of the United States or of this
10 state, the reduction can be made without jeopardizing the economic
11 stability of the housing being financed;

12 (14) Sell, at public or private sale, with or without public
13 bidding, any mortgage, mortgage loan, or other instrument or asset held
14 by the commission;

15 (15) Employ, contract with, or engage engineers, architects,
16 attorneys, financial advisors, bond underwriters, mortgage lenders,
17 mortgage administrators, housing construction or financing experts,
18 other technical or professional assistants, and such other personnel as
19 are necessary. The commission may delegate to the appropriate persons
20 the power to execute legal instruments on its behalf;

21 (16) Receive contributions or grants from any source unless
22 otherwise prohibited;

23 (17) Impose covenants running with the land in order to satisfy and
24 enforce the requirements of applicable state and federal law and
25 commission policy with respect to housing or other facilities financed
26 by the commission or assisted by federal, state, or local programs
27 administered by the commission, by executing and recording regulatory
28 agreements or other covenants between the commission and the person or
29 entity to be bound. These regulatory agreements and covenants shall
30 run with the land and be enforceable by the commission or its
31 successors or assigns against the person or entity making the
32 regulatory agreement or covenants or its successors or assigns, even
33 though there may be no privity of estate or privity of contract between
34 the commission or its successors or assigns and the person or entity
35 against whom enforcement is sought. The term of any such covenant
36 shall be set forth in the recorded agreement containing the covenant.
37 This subsection shall apply to regulatory agreements and covenants

1 previously entered into by the commission as well as regulatory
2 agreements and covenants entered into by the commission on or after
3 July 27, 1997;

4 (18) Delegate any of its powers and duties if consistent with the
5 purposes of this chapter;

6 (19) Exercise any other power reasonably required to implement the
7 purposes of this chapter.

8 **Sec. 8.** RCW 43.180.050 and 1986 c 264 s 1 are each amended to read
9 as follows:

10 (1) In addition to other powers and duties prescribed in this
11 chapter, and in furtherance of the purposes of this chapter to provide
12 decent, safe, sanitary, and affordable housing for eligible persons,
13 the commission is empowered to:

14 (a) Issue bonds in accordance with this chapter;

15 (b) Invest in, purchase, or make commitments to purchase or take
16 assignments from mortgage lenders of mortgages or mortgage loans;

17 (c) Make loans to or deposits with mortgage lenders for the purpose
18 of making mortgage loans; and

19 (d) Participate fully in federal and other governmental programs
20 and to take such actions as are necessary and consistent with this
21 chapter to secure to itself and the people of the state the benefits of
22 those programs and to meet their requirements, including such actions
23 as the commission considers appropriate in order to have the interest
24 payments on its bonds and other obligations treated as tax exempt under
25 the code.

26 (2) The commission shall establish eligibility standards for
27 eligible persons, considering at least the following factors:

28 (a) Income;

29 (b) Family size;

30 (c) Cost, condition and energy efficiency of available residential
31 housing;

32 (d) Availability of decent, safe, and sanitary housing;

33 (e) Age or infirmity; and

34 (f) Applicable federal, state, and local requirements.

35 (3) The commission may only allocate low-income housing tax credits
36 to organizations that are defined as a nonprofit organization under

1 section 501(c)(3) of the internal revenue code or similar successor
2 provisions.

3 The state auditor shall audit the books, records, and affairs of
4 the commission annually to determine, among other things, if the use of
5 bond proceeds complies with the general plan of housing finance
6 objectives including compliance with the objective for the use of
7 financing assistance for implementation of cost-effective energy
8 efficiency measures in dwellings.

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