
SUBSTITUTE HOUSE BILL 2753

State of Washington 61st Legislature 2010 Regular Session

By House Capital Budget (originally sponsored by Representatives Orwall, Springer, Maxwell, Jacks, Nelson, Simpson, Conway, Ormsby, Chase, and Santos)

READ FIRST TIME 01/25/10.

1 AN ACT Relating to the creation of a workforce housing program;
2 amending RCW 43.180.160, 39.86.100, 39.86.120, 39.86.130, 39.86.140,
3 39.86.150, 39.86.170, and 39.86.190; reenacting and amending RCW
4 39.86.110; adding a new section to chapter 39.86 RCW; and repealing RCW
5 39.86.200.

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

7 **Sec. 1.** RCW 43.180.160 and 2009 c 291 s 1 are each amended to read
8 as follows:

9 (1) The total amount of outstanding indebtedness of the commission
10 may not exceed (~~six~~) seven billion dollars at any time. The
11 calculation of outstanding indebtedness shall include the initial
12 principal amount of an issue and shall not include interest that is
13 either currently payable or that accrues as a part of the face amount
14 of an issue payable at maturity or earlier redemption. Outstanding
15 indebtedness shall not include notes or bonds as to which the
16 obligation of the commission has been satisfied and discharged by
17 refunding or for which payment has been provided by reserves or
18 otherwise.

1 (2) One billion dollars of the outstanding indebtedness of the
2 commission is for the primary purpose of implementing the workforce
3 housing program to increase opportunities for nonprofit organizations
4 and public agencies to purchase, acquire, build, and own real property
5 to be used for affordable housing for low and moderate-income
6 households. The workforce housing program is intended to provide these
7 opportunities for public agencies and nonprofit organizations,
8 including those materially participating as a managing member or
9 general partner of a partnership, limited liability company, or
10 equivalent organization, through the issuance of tax exempt or taxable
11 revenue bonds issued by the commission in conjunction with a state
12 subsidy necessary to make bond issues to finance affordable housing
13 properties financially feasible. The program is intended to provide
14 financing for affordable housing that will meet the following income
15 and rent restrictions during the period of initial bond indebtedness
16 and thereafter:

17 (a) During the period of initial bond indebtedness under the
18 program, the owner of the property must meet one of the following
19 requirements: A minimum of twenty percent of the units will be
20 occupied by households earning less than fifty percent of area median
21 income and an additional thirty-one percent of the units will be
22 occupied by persons earning less than eighty percent of area median
23 income; or forty percent of the units will be occupied by households
24 earning less than sixty percent of area median income and an additional
25 eleven percent of the units will be occupied by households earning less
26 than eighty percent of area median income.

27 (b) After the initial bond indebtedness is retired, the rents
28 charged for units in the project will be adjusted to be sufficient to
29 pay reasonable operation and maintenance expenses, including necessary
30 capital needs, and to make reasonable deposits into a reserve account
31 with the intent of providing affordable housing to very low or low-
32 income households for the remaining useful life of the property. The
33 reasonableness of the rent levels must be periodically approved by the
34 commission based on information provided by the owner of the property
35 about income, expenses, and necessary reserve levels. The
36 determination of the commission regarding the reasonableness of the
37 rent levels will be final.

1 (c) The commission will enter into a recorded regulatory agreement
2 with the borrower at the time of the issuance of bonds under the
3 program for the purpose of ensuring that the property will meet the
4 income and rent restrictions established in this section. The
5 commission may charge such compliance fees as necessary to ensure
6 enforcement of the income and rent restrictions during the useful life
7 of the property.

8 (3) If no state subsidies are available to make the program in
9 subsection (2) of this section feasible; then the commission may pass
10 a resolution stating these facts and authorize the use of a portion of
11 the one billion dollars of indebtedness intended for the program to
12 support its other bond programs until such time as the one billion
13 dollars is exhausted or state subsidies are available to make the
14 program feasible.

15 **Sec. 2.** RCW 39.86.100 and 2001 c 330 s 1 are each amended to read
16 as follows:

17 The federal ~~((tax reform act))~~ internal revenue code of 1986, as
18 amended imposes ~~((an annual))~~ ceilings on the aggregate amount of
19 ~~((federally tax-exempt private activity))~~ certain types of bonds,
20 including tax-exempt private activity bonds ~~((for housing, student~~
21 ~~loans, exempt facilities, small issue industrial, redevelopment, and~~
22 ~~certain public utility projects))~~ and other types, that may be issued
23 during any calendar year by or on behalf of states and their political
24 subdivisions. ~~((In 2001, the ceiling will be increased to sixty two~~
25 ~~dollars and fifty cents per capita and in 2002 the ceiling will be~~
26 ~~increased to seventy five dollars per capita, to be indexed annually,~~
27 ~~for 2003 and every year thereafter. However, a study by the department~~
28 ~~of community development indicates that the dollar amount of the state~~
29 ~~ceiling is considerably less than the anticipated dollar amount for~~
30 ~~which issuers would need an allocation from the state ceiling.))~~ The
31 ~~((tax reform act of 1986))~~ code provides a formula for allocating the
32 annual tax-exempt private activity bond ceiling among various issuers
33 of private activity bonds for housing, student loans, exempt
34 facilities, and redevelopment projects within a state, but permits each
35 state to enact a different allocation method that is appropriate to
36 that state's needs. In addition, congress might, from time to time,
37 amend the code by authorizing state ceilings on additional types of

1 bonds. The purpose of this chapter is to provide a flexible and
2 efficient method of allocating the annual state ceiling in Washington
3 in a manner that recognizes the need of the state and its political
4 subdivisions to finance activities or projects that satisfy a
5 substantial public purpose.

6 **Sec. 3.** RCW 39.86.110 and 2009 c 565 s 23 are each reenacted and
7 amended to read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Agency" means the department of commerce.

11 (2) (~~"Board" means the community economic revitalization board~~
12 ~~established under chapter 43.160 RCW.~~

13 ~~(3))~~ "Bond use category" means: (a) Any of the following
14 categories of bonds which are subject to the annual state tax-exempt
15 private activity bond ceiling: (~~(a))~~ (i) Housing, (~~(b) student~~
16 ~~loans,~~ ~~(c))~~ (ii) small issue, (~~(d))~~ (iii) exempt facility, (~~(e))~~
17 (iv) redevelopment, (~~(f) public utility; and (g))~~ and (v) remainder;
18 and (b) any other categories of bonds described in the code for which
19 there is a separate ceiling, with the exception of bonds designated
20 solely for school district purposes.

21 (~~(4))~~ (3) "Bonds" means bonds, notes, or other obligations of an
22 issuer.

23 (~~(5))~~ (4) "Carryforward" is an allocation or reallocation of the
24 state ceiling which is carried from one calendar year to a later year,
25 in accordance with the code.

26 (~~(6))~~ (5) "Code" means the federal internal revenue code of 1986
27 (~~as it exists on May 8, 1987. It also means the code as amended after~~
28 ~~May 8, 1987, but only if the amendments are approved by the agency~~
29 ~~under RCW 39.86.180)), as amended.~~

30 (~~(7))~~ (6) "Director" means the director of the agency or the
31 director's designee.

32 (~~(8))~~ (7) "Exempt facility" means the bond use category which
33 includes all bonds which are exempt facility bonds as described in the
34 code, except those for qualified residential rental projects.

35 (~~(9))~~ (8) "Firm and convincing evidence" means documentation that
36 satisfies the director that the issuer is committed to the prompt

1 financing of, and will issue (~~(tax-exempt)~~) bonds for, the project or
2 program for which it requests an allocation from the state ceiling.

3 ~~((+10))~~ (9) "Housing" means the bond use category which includes:
4 (a) Mortgage revenue bonds and mortgage credit certificates as
5 described in the code; and (b) exempt facility bonds for qualified
6 residential rental projects as described in the code.

7 ~~((+11))~~ (10) "Initial allocation" means the portion or dollar
8 value of the annual state tax-exempt private activity bond ceiling
9 which initially in each calendar year is allocated to a bond use
10 category for the issuance of private activity bonds, in accordance with
11 RCW 39.86.120.

12 ~~((+12))~~ (11) "Issuer" means the state, any agency or
13 instrumentality of the state, any political subdivision, or any other
14 entity authorized to issue (~~(private activity)~~) bonds under state law.

15 (12) "Original allocation" means any allocation of bond authority
16 by a mandatory formula in the code, except for the initial allocations
17 of the annual state ceiling on tax-exempt private activity bonds.

18 (13) "Private activity bonds" means obligations that are private
19 activity bonds as defined in the code or bonds for purposes described
20 in section 1317(25) of the (~~(tax reform act)~~) federal internal revenue
21 code of 1986, as amended.

22 (14) "Program" means the activities for which housing bonds (~~(or~~
23 ~~student loan bonds)~~) may be issued.

24 (15) (~~("Public utility" means the bond use category which includes~~
25 ~~those bonds described in section 1317(25) of the tax reform act of~~
26 ~~1986.~~

27 ~~(+16))~~ "Redevelopment" means the bond use category which includes
28 qualified redevelopment bonds as described in the code.

29 ~~((+17))~~ (16) "Remainder" means that portion of the annual state
30 tax-exempt private activity bond ceiling remaining after initial
31 allocations are made under RCW 39.86.120 for any other bond use
32 category.

33 ~~((+18))~~ (17) "Small issue" means the bond use category which
34 includes all industrial development bonds that constitute qualified
35 small issue bonds, as described in the code.

36 ~~((+19))~~ (18) "State" means the state of Washington.

37 ~~((+20))~~ (19) "State ceiling" means the volume limitation for each

1 calendar year on ((tax-exempt private activity)) specific bond((s))
2 types, including tax-exempt private activity bonds and other bonds, as
3 imposed by the code.

4 ((-21) "Student loans" means the bond use category which includes
5 qualified student loan bonds as described in the code.)

6 NEW SECTION. Sec. 4. A new section is added to chapter 39.86 RCW
7 to read as follows:

8 Original allocations or any reallocations of state bond ceilings
9 other than the tax-exempt private activity bond ceiling must be
10 determined by formula as provided in the code, or by department rule if
11 no formula is provided in the code.

12 **Sec. 5.** RCW 39.86.120 and 2001 c 330 s 2 are each amended to read
13 as follows:

14 (1) Except as provided in subsections (2) and (4) of this section,
15 the initial allocation of the state ceiling shall be for each year as
16 follows:

			2002 and	ALTERNATIVE
			THEREAFTER	ALLOCATION))
	BOND USE			2010 and
	CATEGORY	((2001	THEREAFTER	THEREAFTER
21	Housing	((27.5%	30.0%	32.0%)) 47.0%
22	Small Issue	((24.5%	24.0%)	25.0%
23	Exempt Facility	((19.5%	19.0%)	20.0%
24	((Student Loans	14.5%	14.0%	15.0%)
25	Public Utility	((10.0%	10.0%)	0.0%
26	Remainder and			
27	Redevelopment	((4.0%	3.0%)	8.0%

28 (2) Initial allocations may be modified by the agency only to
29 reflect an issuer's carryforward amount. Any reduction of the initial
30 allocation shall be added to the remainder and be available for
31 allocation or reallocation.

32 (3) The remainder shall be allocated by the agency among one or
33 more issuers from any bond use category with regard to the criteria
34 specified in RCW 39.86.130.

1 (4) Should any bond use category no longer be subject to the state
2 ceiling due to federal or state provisions of law, the agency shall
3 divide the amount of that initial allocation among the remaining
4 categories as necessary or appropriate with regard to the criteria
5 specified in RCW 39.86.130. (~~Upon the earlier of: (a) Exhaustion of~~
6 ~~the seven hundred fifty million dollar authority under I.R.C. 1317(25),~~
7 ~~or any new federal legislation increasing the amount of authority, or~~
8 ~~creating additional authority; or (b) waiver of the authority described~~
9 ~~under (a) of this subsection due to alternative federal authority that~~
10 ~~does not use a state volume cap, then the alternative allocation~~
11 ~~schedule in subsection (1) of this section will be used.))~~

12 (5)(a) Prior to (~~September 1~~) July 1st of each calendar year, any
13 available portion of an initial allocation may be allocated or
14 reallocated only to an issuer within the same bond use category, except
15 that the remainder category, or portions thereof, may be allocated at
16 any time to any bond use category.

17 (b) Beginning (~~September 1~~) July 1st of each calendar year, the
18 agency may allocate or reallocate any available portion of the state
19 ceiling to any bond use category with regard to the criteria specified
20 in RCW 39.86.130.

21 **Sec. 6.** RCW 39.86.130 and 1987 c 297 s 4 are each amended to read
22 as follows:

23 (1) In granting an allocation, reallocation, or carryforward of the
24 state ceiling as provided in this chapter, the agency shall consider
25 existing state priorities and other such criteria, including but not
26 limited to, the following criteria:

27 (a) Need of issuers to issue (~~private activity~~) bonds within a
28 bond use category subject to a state ceiling;

29 (b) Amount of the state ceiling available;

30 (c) Public benefit and purpose to be satisfied, including economic
31 development, educational opportunity, and public health, safety, or
32 welfare;

33 (d) Cost or availability of alternative methods of financing for
34 the project or program; and

35 (e) Certainty of using the allocation which is being requested.

36 (2) In determining whether to allocate an amount of the state

1 ceiling to an issuer within any bond use category, the agency shall
2 consider, but is not limited to, the following criteria for each of the
3 bond use categories:

4 (a) Housing: Criteria which comply with RCW 43.180.200.

5 ~~(b) ((Student loans: Criteria which comply with the applicable
6 provisions of Title 28B RCW and rules adopted by the higher education
7 coordinating board or applicable state agency dealing with student
8 financial aid.~~

9 ~~(c)) Small issue: ((Recommendation by the board regarding how the
10 amount of the state ceiling set aside for the small issue bond use
11 category shall be allocated among issuers.))~~ Factors which may
12 include:

13 (i) The number of employment opportunities the project is likely to
14 create or retain in relation to the amount of the bond issuance;

15 (ii) The level of unemployment existing in the geographic area
16 likely to be affected by the project;

17 (iii) A commitment to providing employment opportunities to low-
18 income persons in cooperation with the employment security department;

19 (iv) Geographic distribution of projects;

20 (v) The number of persons who will benefit from the project;

21 (vi) Consistency with criteria identified in subsection (1) of this
22 section; and

23 (vii) Order in which requests were received(~~(; and~~

24 ~~(viii) Requirements of the board's umbrella bond program)).~~

25 ~~((d))~~ (c) Exempt facility or redevelopment: Factors which may
26 include:

27 (i) State issuance needs;

28 (ii) Consistency with criteria identified in subsection (1) of this
29 section;

30 (iii) Order in which requests were received;

31 (iv) The proportionate number of persons in relationship to the
32 size of the community who will benefit from the project; and

33 (v) The unique timing and issuance needs of large scale projects
34 that may require allocations in more than one year.

35 ~~((e))~~ (d) Public utility: Factors which may include:

36 (i) Consistency with criteria identified in subsection (1) of this
37 section; and

38 (ii) Timing needs for issuance of bonds over a multi-year period.

1 **Sec. 7.** RCW 39.86.140 and 1987 c 297 s 5 are each amended to read
2 as follows:

3 (1) No issuer may receive an allocation of the state ceiling
4 without a certificate of approval from the agency.

5 (2)~~((a))~~ For each state ceiling allocation request, an issuer
6 shall submit to the agency, no sooner than ninety days prior to the
7 beginning of a calendar year for which an allocation of the state
8 ceiling is being requested, a form identifying:

9 ~~((i))~~ (a) The amount of the allocation sought;

10 ~~((ii))~~ (b) The bond use category from which the allocation sought
11 would be made;

12 ~~((iii))~~ (c) The project or program for which the allocation is
13 requested;

14 ~~((iv))~~ (d) The financing schedule for which the allocation is
15 needed; and

16 ~~((v))~~ (e) Any other such information required by the agency,
17 including information which corresponds to the allocation criteria of
18 RCW 39.86.130.

19 ~~((b) Nothing in (a) of this subsection precludes a public utility
20 issuer from filing and the agency from considering a request at such
21 times as may be appropriate in order to meet the criteria set forth in
22 RCW 39.86.130(2)(e)(ii).))~~

23 (3) The agency may approve or deny an allocation for all or a
24 portion of the issuer's request. Any denied request, however, shall
25 remain on file with the agency for the remainder of the calendar year
26 and shall be considered for receiving any allocation, reallocation, or
27 carryforward of unused portions of the state ceiling during that
28 period.

29 (4) After receiving an allocation request, the agency shall mail to
30 the requesting issuer a written certificate of approval or notice of
31 denial for an allocation amount, by a date no later than the latest of
32 the following:

33 ~~(a) ((Forty five days from May 8, 1987;~~

34 ~~(b))~~ February 1st of the calendar year~~((, other than 1987,))~~ for
35 which the request is made;

36 ~~((c))~~ (b) Fifteen days from the date the agency receives an
37 allocation request; or

1 ~~((d))~~ (c) Fifteen days from the date the agency receives a
2 recommendation by the board with regard to a small issue allocation
3 request, should the board choose to review individual requests.

4 (5)(a) For requests of the state ceiling of any calendar year, the
5 following applies to all bond use categories except housing ~~((and~~
6 ~~student loans))~~:

7 (i) Except for housing ~~((and student loans))~~, any allocations
8 granted prior to April 1st, for which bonds have not been issued by
9 ~~((September 1))~~ July 1st of the same calendar year, shall revert to the
10 agency on ~~((September 1))~~ July 1st of the same calendar year for
11 reallocation unless an extension or carryforward is granted;

12 (ii) Except for housing ~~((and student loans,))~~ any allocations
13 granted on or after April 1st, for which bonds have not been issued by
14 ~~((December 15))~~ October 15th of the same calendar year, shall revert to
15 the agency on ~~((December 15))~~ October 15th of the same calendar year
16 for reallocation unless an extension or carryforward is granted.

17 (b) For each calendar year, any housing ~~((or student loan))~~
18 allocations, for which bonds have not been issued by December 15th of
19 the same calendar year, shall revert to the agency on December 15th of
20 the same calendar year for reallocation unless an extension or
21 carryforward is granted.

22 (6) An extension of the deadlines provided by subsection (5) of
23 this section may be granted by the agency for the approved allocation
24 amount or a portion thereof, based on:

25 (a) Firm and convincing evidence that the bonds will be issued
26 before the end of the calendar year if the extension is granted; and

27 (b) Any other criteria the agency deems appropriate.

28 (7) If an issuer determines that bonds subject to the state ceiling
29 will not be issued for the project or program for which an allocation
30 was granted, the issuer shall promptly notify the agency in writing so
31 that the allocation may be canceled and the amount may be available for
32 reallocation.

33 (8) Bonds subject to the state ceiling may be issued only to
34 finance the project or program for which a certificate of approval is
35 granted.

36 (9) Within three business days of the date that bonds for which an
37 allocation of the state ceiling is granted have been delivered to the
38 original purchasers, the issuer shall mail to the agency a written

1 notification of the bond issuance. In accordance with chapter 39.44
2 RCW, the issuer shall also complete bond issuance information on the
3 form provided by the agency.

4 (10) If the total amount of (~~tax-exempt~~) bonds issued under the
5 authority of a state ceiling for a project or program is less than the
6 amount allocated, the remaining portion of the allocation shall revert
7 to the agency for reallocation in accordance with the criteria in RCW
8 39.86.130. If the amount of (~~tax-exempt~~) bonds actually issued under
9 the authority of a state ceiling is greater than the amount allocated,
10 the entire allocation shall be disallowed.

11 **Sec. 8.** RCW 39.86.150 and 1987 c 297 s 6 are each amended to read
12 as follows:

13 (1) Beginning (~~September 1~~) July 1st of each calendar year, the
14 agency may allocate or reallocate any portions of the annual state tax-
15 exempt private activity bond ceiling for which no certificate of
16 approval is in effect. Reallocations may also be made from the
17 remainder category at any time during the year.

18 (2) Prior to the end of each calendar year, the agency shall
19 allocate or reallocate any unused portions of the state ceiling among
20 one or more issuers as carryforward, to be used within three years, in
21 accordance with the code and relevant criteria described in RCW
22 39.86.130.

23 (3) Reallocations of state bond ceilings other than the annual tax-
24 exempt private activity bond ceiling may be made by the agency in
25 accordance with the code or as established in agency rule when not
26 specified in the code.

27 **Sec. 9.** RCW 39.86.170 and 1987 c 297 s 8 are each amended to read
28 as follows:

29 A fee schedule shall be established by rule by the agency to assist
30 in support of bond allocation activities. Fees shall reflect costs
31 actually incurred or expected to be incurred by the agency in its bond
32 allocation and bond users clearinghouse activities.

33 **Sec. 10.** RCW 39.86.190 and 2009 c 518 s 19 are each amended to
34 read as follows:

35 By February 1st of each even-numbered year, the agency shall

1 summarize for the legislature each previous year's bond allocation
2 requests and issuance. Beginning in (~~June of 1988~~) February 2010 and
3 thereafter in (~~June~~) February of each even-numbered year, the agency
4 shall also submit a biennial report summarizing usage of the bond
5 allocation proceeds and any policy concerns for future bond
6 allocations.

7 NEW SECTION. Sec. 11. RCW 39.86.200 (Ratification) and 1987 c 297
8 s 11 are each repealed.

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