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HOUSE BILL 2753

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Orwall, Springer, Maxwell, Jacks, Nelson, Simpson, Conway, Ormsby, Chase, and Santos

Read first time 01/13/10. Referred to Committee on Capital Budget.

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 material participating nonprofit organizations or nonprofit  
9 managing members 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  
18 defined as "code" in RCW 39.86.110, imposes ~~((an annual))~~ ceilings on  
19 the aggregate amount of ~~((federally tax-exempt private activity))~~  
20 certain types of bonds, including tax-exempt private activity bonds  
21 ~~((for housing, student loans, exempt facilities, small issue~~  
22 ~~industrial, redevelopment, and certain public utility projects))~~ and  
23 other types, that may be issued during any calendar year by or on  
24 behalf of states and their political subdivisions. ~~((In 2001, the~~  
25 ~~ceiling will be increased to sixty two dollars and fifty cents per~~  
26 ~~capita and in 2002 the ceiling will be increased to seventy five~~  
27 ~~dollars per capita, to be indexed annually, for 2003 and every year~~  
28 ~~thereafter. However, a study by the department of community~~  
29 ~~development indicates that the dollar amount of the state ceiling is~~  
30 ~~considerably less than the anticipated dollar amount for which issuers~~  
31 ~~would need an allocation from the state ceiling.))~~ The ~~((tax reform~~  
32 ~~act of 1986))~~ code provides a formula for allocating the annual tax-  
33 exempt private activity bond ceiling among various issuers of private  
34 activity bonds for housing, student loans, exempt facilities, and  
35 redevelopment projects within a state, but permits each state to enact  
36 a different allocation method that is appropriate to that state's  
37 needs. In addition, congress might, from time to time, amend the code

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

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

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

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

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

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

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

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

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

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

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

36 ~~((9))~~ (8) "Firm and convincing evidence" means documentation that

1 satisfies the director that the issuer is committed to the prompt  
2 financing of, and will issue (~~((tax-exempt))~~) bonds for, the project or  
3 program for which it requests an allocation from the state ceiling.

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

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

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

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

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

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

25 (15) (~~((("Public-utility" means the bond use category which includes~~  
26 ~~those bonds described in section 1317(25) of the tax reform act of~~  
27 ~~1986.~~

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

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

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

37 (~~((+19+))~~) (18) "State" means the state of Washington.

1        ~~((20))~~ (19) "State ceiling" means the volume limitation for each  
 2 calendar year on ~~((tax-exempt private activity))~~ specific bond~~((s))~~  
 3 types, including tax-exempt private activity bonds and other bonds, as  
 4 imposed by the code.

5        ~~((21))~~ (20) "Student loans" means the bond use category which  
 6 includes qualified student loan bonds as described in the code.

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

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

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

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

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

29        (2) Initial allocations may be modified by the agency only to  
 30 reflect an issuer's carryforward amount. Any reduction of the initial  
 31 allocation shall be added to the remainder and be available for  
 32 allocation or reallocation, except as provided in subsection (6) of  
 33 this section.

34        (3) The remainder shall be allocated by the agency among one or

1 more issuers from any bond use category with regard to the criteria  
2 specified in RCW 39.86.130.

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

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

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

23 (6) If no qualified allocation request for an initial allocation  
24 from the student loan category is received by April 1st of any calendar  
25 year, the initial allocation for student loans must be transferred to  
26 the housing category.

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

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

- 33 (a) Need of issuers to issue (~~private activity~~) bonds within a  
34 bond use category subject to a state ceiling;
- 35 (b) Amount of the state ceiling available;
- 36 (c) Public benefit and purpose to be satisfied, including economic

1 development, educational opportunity, and public health, safety, or  
2 welfare;

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

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

6 (2) In determining whether to allocate an amount of the state  
7 ceiling to an issuer within any bond use category, the agency shall  
8 consider, but is not limited to, the following criteria for each of the  
9 bond use categories:

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

11 (b) Student loans: Criteria which comply with the applicable  
12 provisions of Title 28B RCW and rules adopted by the Washington higher  
13 education (~~coordinating board or applicable state agency dealing with~~  
14 ~~student financial aid~~) facilities authority.

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

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

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

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

25 (iv) Geographic distribution of projects;

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

27 (vi) Consistency with criteria identified in subsection (1) of this  
28 section; and

29 (vii) Order in which requests were received(~~and~~  
30 ~~(viii) Requirements of the board's umbrella bond program~~)).

31 (d) Exempt facility or redevelopment: Factors which may include:

32 (i) State issuance needs;

33 (ii) Consistency with criteria identified in subsection (1) of this  
34 section;

35 (iii) Order in which requests were received;

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



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

3 (e) Public utility: Factors which may include:

4 (i) Consistency with criteria identified in subsection (1) of this  
5 section; and

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

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

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

11 (2)((+a+)) For each state ceiling allocation request, an issuer  
12 shall submit to the agency, no sooner than ninety days prior to the  
13 beginning of a calendar year for which an allocation of the state  
14 ceiling is being requested, a form identifying:

15 ((+i+)) (a) The amount of the allocation sought;

16 ((+ii+)) (b) The bond use category from which the allocation sought  
17 would be made;

18 ((+iii+)) (c) The project or program for which the allocation is  
19 requested;

20 ((+iv+)) (d) The financing schedule for which the allocation is  
21 needed; and

22 ((+v+)) (e) Any other such information required by the agency,  
23 including information which corresponds to the allocation criteria of  
24 RCW 39.86.130.

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

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

35 (4) After receiving an allocation request, the agency shall mail to  
36 the requesting issuer a written certificate of approval or notice of

1 denial for an allocation amount, by a date no later than the latest of  
2 the following:

3 (a) (~~Forty five days from May 8, 1987;~~  
4 ~~(b)~~) February 1<sup>st</sup> of the calendar year(~~(, other than 1987,)~~) for  
5 which the request is made;

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

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

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

14 (i) Except for housing (~~and student loans~~), any allocations  
15 granted prior to April 1<sup>st</sup>, for which bonds have not been issued by  
16 (~~September 1~~) July 1<sup>st</sup> of the same calendar year, shall revert to the  
17 agency on (~~September 1~~) July 1<sup>st</sup> of the same calendar year for  
18 reallocation unless an extension or carryforward is granted;

19 (ii) Except for housing (~~and student loans~~), any allocations  
20 granted on or after April 1<sup>st</sup>, for which bonds have not been issued by  
21 (~~December 15~~) October 15<sup>th</sup> of the same calendar year, shall revert to  
22 the agency on (~~December 15~~) October 15<sup>th</sup> of the same calendar year  
23 for reallocation unless an extension or carryforward is granted.

24 (b) For each calendar year, any housing (~~or student loan~~)  
25 allocations, for which bonds have not been issued by December 15<sup>th</sup> of  
26 the same calendar year, shall revert to the agency on December 15<sup>th</sup> of  
27 the same calendar year for reallocation unless an extension or  
28 carryforward is granted.

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

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

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

35 (7) If an issuer determines that bonds subject to the state ceiling  
36 will not be issued for the project or program for which an allocation  
37 was granted, the issuer shall promptly notify the agency in writing so

1 that the allocation may be canceled and the amount may be available for  
2 reallocation.

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

6 (9) Within three business days of the date that bonds for which an  
7 allocation of the state ceiling is granted have been delivered to the  
8 original purchasers, the issuer shall mail to the agency a written  
9 notification of the bond issuance. In accordance with chapter 39.44  
10 RCW, the issuer shall also complete bond issuance information on the  
11 form provided by the agency.

12 (10) If the total amount of (~~tax-exempt~~) bonds issued under the  
13 authority of a state ceiling for a project or program is less than the  
14 amount allocated, the remaining portion of the allocation shall revert  
15 to the agency for reallocation in accordance with the criteria in RCW  
16 39.86.130. If the amount of (~~tax-exempt~~) bonds actually issued under  
17 the authority of a state ceiling is greater than the amount allocated,  
18 the entire allocation shall be disallowed.

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

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

26 (2) Prior to the end of each calendar year, the agency shall  
27 allocate or reallocate any unused portions of the state ceiling among  
28 one or more issuers as carryforward, to be used within three years, in  
29 accordance with the code and relevant criteria described in RCW  
30 39.86.130.

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

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

1 A fee schedule shall be established by rule by the agency to assist  
2 in support of bond allocation activities. Fees shall reflect costs  
3 actually incurred or expected to be incurred by the agency in its bond  
4 allocation and bond users clearinghouse activities.

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

7 By February 1st of each even-numbered year, the agency shall  
8 summarize for the legislature each previous year's bond allocation  
9 requests and issuance. Beginning in (~~June of 1988~~) February 2010 and  
10 thereafter in (~~June~~) February of each even-numbered year, the agency  
11 shall also submit a biennial report summarizing usage of the bond  
12 allocation proceeds and any policy concerns for future bond  
13 allocations.

14 NEW SECTION. **Sec. 11.** RCW 39.86.200 (Ratification) and 1987 c 297  
15 s 11 are each repealed.

--- END ---