Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Community Development, Housing & Tribal Affairs Committee

HB 2913

Brief Description: Creating a Washington affordable housing tax credit program.

Sponsors: Representatives McBride, Barkis, Ryu, Appleton, Senn and Santos.

Brief Summary of Bill

- Creates the Washington Affordable Housing Tax Credit program to provide funding for the development of qualified low-income housing projects.

Hearing Date: 1/30/18

Staff: Kirsten Lee (786-7133).

Background:

There is a federal tax credit program for owners of low-income housing development. In lieu of Business and Occupation taxes on certain activities, utility companies, public and private pay state Public Utility Tax and insurance companies pay state Insurance Premium taxes.

Federal Low-Income Housing Tax Credits.

The Low-Income Housing Tax Credit (LIHTC) is a federal income tax incentive program used to encourage private investment in affordable housing development for low-income households, including new development and rehabilitation. The Internal Revenue Service allocates credits to the Washington State Housing Finance Commission (Commission), and the Commission then awards credits to owners of qualifying low-income housing unit developments through a competitive application process.

Qualifying developments may include single-family or multi-family units, and must serve individuals at or below 60 percent of area gross median income (AGMI) for the county in which

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the property is located for a period of 30 years. The project owner (and any investors) must comply with a number of requirements including:

- rent and utilities in a qualified low-income housing unit must not exceed 30 percent of the household income;
- at least 40 percent of the units must be rented to households earning 60 percent or less of the AMGI, or at least 20 percent of the units must be rented to households earning 50 percent or less AMGI; and
- special needs housing commitments pursuant to state laws or rules must be met.

The Commission may not issue more than the minimum amount of credit needed to ensure that the project will be financially feasible. Consideration of whether tax-exempt bonds are issued to fund the qualifying development is given when calculating the amount of credit to be issued. The amount of credit allocated for qualified development is 70 percent of the project costs for a new building not federally subsidized for the taxable year or 30 percent of project costs for other qualified development.

The owner may sell credits to investors to raise capital for their projects. Investors in the project receive a reduction in their federal tax liability by agreeing to the terms of the credit requirements and terms of the agreement. Credits are received annually over a 10-year period. Owners and investors must adhere to compliance requirements for a period of 15 years.

The Commission monitors all tax-credit properties for compliance. Project owners are required to submit an Owners Annual Certification, which provides compliance data on all units in the property. The Commission reviews the reports submitted for any compliance issues and, at least every three years, conducts an on-site visit of the qualified development.

Serious violations of federal requirements may result in the recapture of all or some of the allocated credits during the 15-year period. Recapture can require repayment of previously claimed credits and, if the issue is not cured within the prescribe period, future credits may not be claimed.

<u>Public Utility Tax</u>.
The Public Utility Tax (PUT) is applied to gross income derived from operation of public and privately owned utilities, including the general categories of transportation, communications, and the supply of energy and water. The PUT is in lieu of the B&O tax. The applicable PUT rate depends upon the specific utility activity. The PUT is collected by the Department of Revenue.

<u>Insurance Premium Taxes</u>.
The Insurance Premium Tax is levied on net premiums collected or received by authorized insurers, except title insurers and fraternal benefit societies, and is in lieu of the B&O tax. However, insurance companies pay B&O tax on income derived from any other activities in which they engage. With some exceptions, authorized insurers are subject to a 2 percent insurance premium tax. The insurance premium tax is collected by the Office of the Insurance Commissioner.

Summary of Bill:

The Washington Affordable Housing Tax Credit (WAHTC) Program is created. The Washington State Housing Finance Commission (Commission) may issue credits against public utility taxes or insurance premium taxes for qualified taxpayers, or owners, of qualified development. "Qualified development" means a qualified low-income housing project, as defined by the Internal Revenue Code for the federal Low-Income Housing Tax Credit (LIHTC) program, that is financed with tax-exempt bonds, located in the state, and determined by the Commission to be eligible for a federal credit regardless of receipt of the federal credit.

The Commission awards the state credit under the WAHTC program, and issues an allocation certificate to the owner of the qualified development. Eligibility for the state credit is based on the LIHTC's criteria.

The Commission determines the amount of the state credit, which may not exceed 40 percent of the tax due. The state credit must be necessary for the development's financial feasibility, may not exceed the amount of the federal credit, and must be earned over six years, beginning with the year in which the development is placed in service. Any amount of the state credit that exceeds the tax due for a taxable year may be carried forward against tax liability in subsequent years, up to 11 years after the state credit was allocated. Unused state credit may not be refunded.

The aggregate amount of state credits allocated in a calendar year may not exceed $42 million plus unallocated state credits for preceding years and recaptured and returned state credits for the calendar year.

Owners of partnerships, limited liability companies, corporations, or similar entities may allocate state credits among the partners, shareholders, members, or other constituent taxpayers. The owner of the qualified development and any investors in the development must submit a copy of the allocation certificate with state tax returns.

Though an owner does not need to have received federal credit to receive state credit for the qualified development, the combination of tax credits received under both programs must be the least amount necessary to ensure the financial feasibility of a qualified development. In addition to maintaining compliance with any applicable federal LIHTC requirements, a qualified development is subject to certain WAHTC compliance requirements for a period of 15 years, or longer, if agreed to by the owner of the qualified development and the Commission. The requirements include that a restrictive covenant be recorded, which states the qualified development is:

- maintained and operated as such; and
- in accordance with certain accessibility and adaptability requirements.

Violations of federal statutory requirements that result in recapture of the federal credits during the first six years after a project is placed in service also result in recapture of the state credit. The amount recaptured will be proportional to the amount of federal credit subject to recapture.

The Commission, in consultation with the Department of Revenue (Department), is required to monitor compliance and report specific occurrences of noncompliance to the Department. The

Commission and the Department are required to adopt rules necessary to carry out responsibilities for the WAHTC program.

By December 31 of each year, the Commission must report on the WAHTC program to the appropriate committees of the Legislature. The report must:

- specify the number of qualified developments that have been allocated state credits during the year and the total number of units supported by each development;
- describe each qualified development that has been allocated state credits, including the geographic location; the household type, demographic information, and income information about the intended residents; and the rent or set-asides authorized for each development; and
- provide housing market and demographic information demonstrating how the qualified developments supported by state credits are addressing the need for affordable housing within the communities they are intended to serve and remaining disparities in housing affordability in those communities.

Appropriation: None.

Fiscal Note: Requested on 1/29/18.

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