

# SENATE BILL REPORT

## ESHB 2849

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As of February 28, 2020

**Title:** An act relating to housing programs administered by the department of commerce.

**Brief Description:** Concerning housing programs administered by the department of commerce.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representatives Tharinger, DeBolt, Macri, Robinson, Chopp, Harris, Leavitt, Ramel and Lekanoff).

**Brief History:** Passed House: 2/16/20, 92-4.

**Committee Activity:** Housing Stability & Affordability: 2/24/20, 2/28/20 [DPA-WM].

Ways & Means:

### Brief Summary of Amended Bill

- Consolidates the Housing Assistance Program and the Affordable Housing Program into the Housing Trust Fund (HTF) Program in statute.
- Requires loan deferrals for HTF projects with at least half of the units serving households with incomes under 50 percent, homeless persons, or persons in need of permanent supportive housing.
- Requires the Department of Commerce to issue cash flow loans for all other HTF loans.
- Changes the funding sources for administrative costs associated with the HTF Program.

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### SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Zeiger, Ranking Member; Fortunato, Assistant Ranking Member; Darneille, Saldaña and Warnick.

**Staff:** Brandon Popovac (786-7465)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Corban Nemeth (786-7736)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** Housing Trust Fund. Established in 1986, the Washington Housing Trust Fund (HTF) Program provides grants or loans to help communities develop and preserve affordable housing to meet the needs of low-income and special needs populations. Since 1986, the HTF has awarded over \$1 billion in funding and helped build or preserve over 50,000 units of affordable housing statewide.

The HTF is governed by two statutory programs: the Housing Assistance Program established in 1986 and the Affordable Housing Program established in 1991. The Department of Commerce (Commerce) refers to both of these statutes in the administration of the HTF.

Housing Trust Fund Programming. Activities eligible for assistance from the HTF or legislative appropriation including down payment and closing cost assistance for low-income first-time home buyers, defined as individuals who have not owned a home during the prior three-year period. Other eligible activities include mortgage subsidies and mortgage insurance guarantee or payments.

In awarding HTF grant and loan funds, Commerce must provide for statewide geographic distribution. Commerce must give first priority to projects that use privately-owned housing stock, including privately-owned housing purchased by a public housing authority or nonprofit public development authority. A second priority must be given to projects that use publicly owned housing. Within these priorities, Commerce must give preference to projects based on some or all of the 14 criteria. Criteria examples include:

- the degree of leveraging of other funds;
- the degree of commitment from programs focusing on special needs populations;
- local government project contributions;
- projects that demonstrate a strong probability of serving the original target group or income level for at least 25 years;
- projects that serve the greatest need;
- projects that provide housing for persons and families with the lowest income; and
- project location and access to area employment centers and public transportation services.

The Housing Preservation Program (HPP) competitively awards grants or loans to fund major building improvements, preservation, and system replacements necessary for the existing HTF portfolio to maintain long-term viability. HPP applications are evaluated based on the following criteria:

- the age of the property, with priority given to buildings older than 15 years old;
- the population served, with priority given to projects serving the lowest income populations;
- the degree of demonstrated reduction in operating or utility costs;
- the potential for additional years added to the affordability commitment period; and
- other criteria determined by Commerce.

Commerce must annually report on its website the following:

- the number of homeownership and multifamily projects funded by the HTF;
- the percentage of the HTF investments made to homeownership and multifamily projects; and

- the total number of households being served at up to 80 percent of the area median income, up to 50 percent of the area median income, and up to 30 percent of the area median income, for both homeownership and multifamily projects.

HTF loan or grant recipients must provide certified final development cost reports to the department in a form acceptable to Commerce, which must use this data as part of its cost containment policy and report such data to the Legislature every odd-numbered year.

Commerce must adopt policies that ensure the state's interest will be protected on the sale or change of use of HTF-funded projects.

Housing Trust Fund Administrative Costs. The cap on administrative costs associated with application, distribution, and project development activities is set at 3 percent of annual funds available for the Housing Assistance Program and the Affordable Housing Program. Reappropriations are not included in the calculation of the annual funds available for determining the administrative costs. The cap on administrative costs for compliance and monitoring activities is set at 0.25 percent of the contracted amount of state investment in the Housing Assistance Program and the Affordable Housing Program.

The HTF account includes revenues from appropriations by the Legislature, private contributions, repayment of loans, interest on real estate brokers' pooled interest bearing escrow accounts, and other sources.

Commerce assesses a combined 2 percent administration and monitoring fee on award amounts to affordable housing contractors that is deposited into the community and economic development fee account.

**Summary of Amended Bill:** The Housing Assistance Program and the Affordable Housing Program are statutorily consolidated into the Housing Trust Fund (HTF) Program, with technical corrections and policy clarifications made to and obsolete language removed from related statutes.

Housing Trust Fund Programming. The definition of first-time home buyer for purposes of down payment and closing cost assistance under the HTF to include:

- a single parent who only owned a home with a former spouse while married;
- a displaced homemaker;
- an individual who has only owned a principal residence not permanently affixed to a permanent foundation; and
- an individual who has only owned a property that is discerned by a license building inspector as uninhabitable

Mortgage subsidies and mortgage insurance guarantee or payments are removed as HTF eligible activities.

In awarding HTF grants and loans, priority is given to projects that increase the total number of affordable housing units, instead of to existing privately owned housing stock and then to publicly owned housing stock. The degree of funding that has already been committed to the project by nonstate entities and projects that demonstrate a strong readiness to proceed to

construction are each added as preference criteria when evaluating HTF grant and loan applications. Commerce must use a separate application form for applications to provide homeownership opportunities.

The housing preservation program and related provisions are added to statute. Any moneys received from repayment of HTF loans made from capital bond proceed appropriations may be used for providing preservation funding.

Commerce reporting requirements from the capital budget, including final development cost data reporting for HTF-funded projects, are added to the HTF statute.

Commerce must implement policies that require projects to remain as affordable housing for a minimum of:

- 40 years for multifamily rental projects; and
- 25 years for homeownership projects.

Administrative Costs. The housing portfolio monitoring account is created as an appropriated account in the state treasury. Account expenditures must be used for costs associated with technical assistance, portfolio preservation activities, and compliance and monitoring activities of HTF grant and loan recipient activity.

Commerce must annually certify the administrative costs needed for compliance and monitoring activities, which may not exceed 7/20 of 1 percent of the annual contracted amount of state investment in the HTF program. The state treasurer must transfer the certified amount from the HTF account to the housing portfolio monitoring account on July 1st of each year.

Commerce may spend up to 3 percent of the HTF appropriation for administrative costs associated with application, distribution, and project development activities. Commerce may spend up to an additional 1 percent from the HTF appropriation on application, distribution, and project development activities if the following conditions are met:

- a spending plan of total anticipated administrative costs is submitted to the Office of Financial Management (OFM) and the appropriate fiscal committees of the Legislature;
- the OFM director finds that the spending plan exceeds the funding available and provides written authorization for Commerce to spend up to an additional 1 percent on such activities; and
- the OFM director notifies the appropriate legislative fiscal committees 10 days before authorizing the additional expenditures.

Commerce may not charge other service and product delivery area fees for the HTF program.

Loan Terms. Commerce must defer loan payments for projects with at least half of the units or beds serving households:

- households at or below 50 percent of the area median income;
- homeless persons, as defined in the homeless housing and assistance program; or
- persons in need of permanent supportive housing.

Loans subject to deferred payments must be payable in full at the end of the loan term or on the sale or change of use of the project unless otherwise negotiated with Commerce or the sale is to the original project sponsor, in which the loan may continue to be deferred.

For all other loans, Commerce must define cash-flow loan terms and conditions. For projects that receive a low-income housing tax credit (LIHTC), the loan payment may not start until the LIHTC investor exits or the project refinances, but not before the end of the initial 15-year compliance period.

Commerce must submit a report to the Governor and Legislature by December 31, 2020, with recommendations for loan terms and conditions for projects not subject to loan deferral.

**EFFECT OF HOUSING STABILITY & AFFORDABILITY COMMITTEE AMENDMENT(S):**

- Adds technical assistance and portfolio preservation activities to the allowable expenditures from the new Housing Portfolio Monitoring account.
- Changes the cap for administrative expenditures associated with compliance and monitoring from 0.25 percent to 0.35 percent of the HTF portfolio.
- Clarifies that the additional 1 percent for administrative costs is for HTF application, distribution, and project development activities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (Housing Stability & Affordability):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill consolidates the two HTF programs and provides efficiency and clarity around the use of administrative fees, requiring Commerce to take 3 percent off the total appropriation and not take dollars out of the individual project through a 2 percent administration and monitoring fee. The bill addresses long-term ambiguities and concerns, especially regarding loan terms under the HTF program. The requirement to provide loan deferrals for projects housing affordability for very low-income households is significant. Codifying the policy that affordable housing will remain affordable for a minimum of 40 years is appreciated since the state investment will be stretched over this minimum period of time making any upfront investments a more valuable benefit to our communities for the long term. Changes to the definitions of extremely low-income household is important to account for wage differentials throughout the state where 50 percent of area media income in rural Washington might be the same or less than the threshold at 30 percent of area median income in urban areas. Changing the definition of first time home buyer will make it align with the federal definition. Commerce needs to receive adequate funding to ensure it continues to have the resources needed to adequately managing the HTF portfolio.

OTHER: The bill codifies an enduring housing preservation program, with as many as 2400 units possibly losing their commitment to affordability by 2030. The bill makes clear that Commerce must defer loans provided to help build the affordable units and may not assess the 2 percent fee on awarded projects. The bill offers Commerce an additional 1 percent off the top of the bond appropriation if we develop a spending plan that OFM approves, which is problematic since using bond dollars for long-term monitoring and compliance is not the preferred path forward. A solution would be to remove this mechanism and raise Commerce's long term monitoring cap from 0.25 percent to 0.35 percent, which should cover both upfront and long term administrative needs. The complexity of the HTF program is significant compared to other capital programs Commerce administers each biennia with some supplemental years providing potential historic appropriations in ultra high-energy efficient housing acquisition and rehabilitation of federal department of agriculture properties.

**Persons Testifying (Housing Stability & Affordability):** PRO: Representative Steve Tharinger, Prime Sponsor; Michele Thomas, Washington Low Income Housing Alliance.

OTHER: Jasmine Vasavada, Department of Commerce.

**Persons Signed In To Testify But Not Testifying (Housing Stability & Affordability):** No one.