

# HOUSE BILL REPORT

## ESSB 5301

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### As Passed House - Amended:

April 12, 2023

**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:** Senate Committee on Housing (originally sponsored by Senators Mullet, Kuderer, Nguyen and Wilson, C.; by request of Department of Commerce).

### Brief History:

#### Committee Activity:

Capital Budget: 3/21/23, 3/31/23 [DPA].

#### Floor Activity:

Passed House: 4/12/23, 97-0.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Consolidates the Housing Assistance Program into the Affordable Housing Program at the Department of Commerce.
- Increases the cap on administrative costs used for the Affordable Housing Program.
- Expands activities eligible for legislative appropriations from capital bond proceeds.
- Repeals the Affordable Housing Land Acquisition Revolving Loan Fund Program and Affordable Housing and Community Facilities Rapid Response Loan Programs.

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### HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** Do pass as amended. Signed by 28 members: Representatives

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; Sandlin, Assistant Ranking Minority Member; Alvarado, Bateman, Cheney, Christian, Couture, Dye, Eslick, Farivar, Fosse, Kloba, Leavitt, Maycumber, McClintock, Morgan, Mosbrucker, Orwall, Peterson, Reed, Rule, Shavers, Stearns and Waters.

**Staff:** Kelci Karl-Robinson (786-7116).

## **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.

The HTF is governed by two statutory programs: (1) the Housing Assistance Program established in 1986; and (2) the Affordable Housing Program established in 1991. The 1991-93 Capital Budget provided \$8 million for the Affordable Housing Program and \$34 million for the Housing Assistance Program. Since that time, the capital budget appropriations do not distinguish between the two programs. The Department of Commerce (Commerce) refers to both of these statutes in the administration of the HTF.

Commerce must announce an HTF grant and loan application period of at least 90 days duration through major media throughout the state.

### Capital Bond Proceeds.

Legislative appropriations from capital bond proceeds in the two statutory programs governing HTF are limited to:

- new construction, rehabilitation, or acquisition of low-income and very low-income housing units;
- down payment or closing cost assistance for eligible first-time home buyers;
- acquisition of housing units for the purpose of preservation as low-income or very low-income housing;
- mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
- mortgage insurance guarantee or payments for eligible projects.

Capital bond proceeds may not be used for Commerce administrative costs, except that during the 2021-2023 fiscal biennium, the Legislature authorized Commerce to use up to 3 percent of the appropriations from capital bond proceeds for administrative costs associated with application, distribution, and project development activities of the Housing Assistance Program.

### Capital Budget Provisions.

The definition of "first-time home buyer" is an individual who has not owned a home during the prior three-year period. The 2021-23 Capital Budget (Capital Budget) includes an expanded definition for "first-time home buyer" to include an individual who meets any of the following:

- a single parent who has only owned a home with a former spouse while married;
- an individual who is a displaced homemaker and has only owned a home with a spouse;
- 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 to be uninhabitable by a licensed building inspector.

The Capital Budget appropriates funding for the Housing Preservation Program (HPP). The 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. A property capital needs assessment must be submitted to Commerce prior to contract execution. The 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.

The Capital Budget requires Commerce to report on its website the following for every funding cycle:

- 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.

The Capital Budget also requires Commerce to annually report on its final cost data for each funded project, including:

- total development cost per unit for each project completed within the past year;
- descriptive statistics such as average and median per unit costs,
- regional cost variation; and
- other costs that Commerce deems necessary to improve cost controls and enhance understanding of development costs.

Commerce must coordinate with the Housing Finance Commission (Commission) to identify relevant development costs data and ensure that the measures are consistent across

relevant agencies.

#### Administrative Costs.

The cap on Commerce's 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 operating budget includes an appropriation from the HTF account to support administration and other costs. 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.

#### Affordable Housing Land Acquisition Revolving Loan Fund Program.

The Legislature created the Affordable Housing Land Acquisition Revolving Loan Fund Program (LAP) in 2007. The Commission administers the LAP, which is a revolving loan fund for land acquisition by eligible organizations that intend to develop affordable housing or facilities intended to provide supportive services to affordable housing residents and low-income households. In 2017 the Legislature expanded eligibility to vacant or improved land. Interest rates on the loans may not exceed 1 percent and the housing developed on the property must be affordable for a minimum of 30 years.

#### Affordable Housing and Community Facilities Rapid Response Loan Program.

The Legislature created the Rapid Response Loan Program in 2008. The Commission administers the Rapid Response Loan Program, which is a revolving fund to provide low-interest, 0 to 3 percent, loans or grants to eligible organizations for purchasing land or real property for affordable housing or community facility development. Any rental housing produced or acquired through this Rapid Response Loan Program must be preserved for at least 30 years.

#### Affordable Housing Advisory Board.

The Affordable Housing Advisory Board (AHAB) advises Commerce on housing and housing-related issues. The AHAB currently has 24 members representing public entities, local governments, housing industries, and other stakeholders.

#### **Summary of Amended Bill:**

Statutory references to the Housing Assistance Program are removed or recodified under the Affordable Housing Program, and the purpose of the Affordable Housing Program is updated to include the preservation of affordable housing in addition to developing and coordinating resources to meet the affordable housing needs of low-income households in

Washington. Commerce must announce an Affordable Housing Program grant and loan application period of at least 60 days duration on its website.

#### Capital Bond Proceeds.

Allowable uses of legislative appropriations from capital bond proceeds in the Affordable Housing Program are expanded to include:

- preservation funding;
- preconstruction technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community neighborhood bases organizations;
- shelters for the homeless;
- projects making housing more accessible to low-income households with members who have disabilities; and
- remodeling and improvements required to meet building codes, licensing, and other legal requirements related to transfers of residential property by the parent of a child with developmental disabilities.

#### Capital Budget Provisions.

The definition of "first-time home buyer," the Housing Preservation Program, and the reporting requirements from the Capital Budget are added to the statute. The certified final development cost report is changed from annually to biennially and does not apply to preservation awards.

#### Administrative Costs.

Commerce is authorized to use up to 3 percent from capital bond proceeds or other new appropriations for administrative costs associated with application, distribution and project development activities. The cap of 3 percent on annual funds is removed.

The cap on administrative costs for compliance and monitoring activities is increased to four-tenths of 1 percent of the contracted amounts of state investment in the Affordable Housing Program.

#### Affordable Housing Advisory Board.

The membership of the AHAB is expanded to include one representative from an interlocal housing collaboration.

#### Other Provisions.

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

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

The following are no longer eligible activities for funding:

- rent subsidies;

- matching funds for social services directly related to providing housing for special-need tenants in assisted projects;
- mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
- mortgage insurance guarantee or payments for eligible projects that are no longer eligible activities for HTF funding.

Preference for projects that include an early learning facility is moved to the list of application evaluation criteria. Commerce is directed to prioritize at least 10 percent of the funding to organizations that serve and are governed by individuals disproportionately impacted by homelessness, including Black, Indigenous, and people of color (BIPOC); and lesbian, gay, bisexual, queer, transgender, and other gender-diverse (LBGTQ) individuals. Nonstate funding sources and project readiness are added as application evaluation criteria. In determining the criteria for evaluating applications, Commerce must collaborate with public entities that finance affordable housing, including the Commission, cities, and counties. Once projects are prioritized, Commerce must award funding to ranked projects at a sufficient level to complete the financing package necessary for an applicant to move forward with the affordable housing project. Commerce is restricted from establishing a maximum per-applicant award. In addition to rural areas and small cities and towns, Commerce must emphasize providing preconstruction technical assistance services to nonprofits serving marginalized communities without a history of receiving HTF or other affordable housing investments, and to other nonprofit community organizations led by and for BIPOC individuals. Commerce may contract with private organizations, in addition to nonprofit organizations, to provide this technical assistance. Personally identifiable information or the street address of the property of occupants or prospective tenants of affordable housing are exempt from public disclosure. The Affordable Housing Land Acquisition Revolving Loan Fund Program, Affordable Housing and Community Facilities Rapid Response Loan Program, and the requirement that Commerce review all properties in its HTF real estate portfolio for potential opportunities for energy efficiencies and prioritize projects based on achieving the greatest expected monetary and energy savings are each repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The bill is largely technical combining two existing statutes together and adding transparency. Commerce appreciates the changes in the striking amendment, but does have concerns with the prohibition on award limits. Funding caps can balance

geographic distribution and increase access to more organizations around the state. Per project and per organization caps have been raised due to increased funding. Projects may request a waiver to the caps. Direct appropriations, Apple Health and Homes, and the preservation programs do not have caps, and the budget language can guide how funding is spent in the Capital Budget. Commerce recommends a sunset on the cap or including it in the Capital Budget to see how it works within the budget cycle. Directing and aligning local, federal, and state priorities is an art and a science. Streamlining and adding clarity to the authorizing legislation is critical for transparency and enabling responsiveness to changing market conditions and priorities in the affordable housing community. The age and growth of investment in the portfolio requires oversight and administrative resources to coordinate and steward the state's investment in affordable housing. More can be done to provide technical assistance to organizations serving marginalized communities.

(Opposed) None.

**Persons Testifying:** Dave Pringle, Department of Commerce; and Steve Walker, Washington State Housing Finance Commission.

**Persons Signed In To Testify But Not Testifying:** None.