

SENATE BILL REPORT

ESSB 5301

As Amended by House, 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: Housing: 1/20/23, 2/01/23 [DPS-WM].

Ways & Means: 2/09/23, 2/20/23 [DPS (HSG), w/oRec].

Floor Activity: Passed Senate: 3/2/23, 49-0.

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

Brief Summary of Engrossed First Substitute Bill

- Consolidates the Housing Assistance Program into the Affordable Housing Program (Program) at the Department of Commerce (Commerce).
- Modifies activities and organizations eligible for assistance under the Program and Commerce requirements for administering the Program.
- Increases the cap on administrative costs used for the 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.
- Adds a representative from an interlocal housing collaboration to the Affordable Housing Advisory Board.

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.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5301 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Braun, Cleveland, Gildon, Rivers, Saldaña, Shewmake, Trudeau and Wilson, J..

Staff: Melissa Van Gorkom (786-7491)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5301 as recommended by Committee on Housing be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Wendy Brown (786-7359)

Background: Housing Assistance Program. The Housing Assistance Program within the Department of Commerce (Commerce) provides housing for persons and families with special housing needs and incomes below 50 percent of the area median income (AMI), adjusted for household size, and for the county where the project is located. Commerce uses funds from the Housing Trust Fund (HTF) and other legislative appropriations to provide grants and loans through a competitive application process to administer the program. Commerce must:

- announce a grant and loan application period of at least 90 days duration through major media throughout the state;
- provide for a statewide geographic distribution with at least 30 percent of funds used to benefit projects located in rural areas of the state;
- give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities. Second priority must be given to activities and projects which utilize existing publicly owned housing stock; and
- evaluate all projects and activities that are similar using the same criteria, and give preference to applications based on specified criteria.

Activities eligible for assistance include:

- new construction, rehabilitation, or acquisition of low and very low-income housing units;
- rent subsidies;
- matching funds for social services for special-need tenants;
- technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community neighborhood bases organizations;
- administrative costs for housing assistance groups or other eligible organizations which include local governments, local housing authorities, behavioral health administrative services organizations, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations;
- shelters and related services for the homeless;
- mortgage subsidies;
- mortgage insurance guarantee or payment for eligible projects;
- down payment or closing cost assistance for eligible first-time home buyers;
- acquisition of housing units for the purpose of prevention as low-income or very low-income housing;
- projects making housing more accessible to families 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 that qualify for the Real Estate Excise Tax exemption.

Commerce may use moneys from the HTF and other legislative appropriation, but not appropriations from capital bond proceeds, to provide preconstruction technical assistance to eligible recipients emphasizing providing services to rural areas and small cities and towns. Commerce may contract with nonprofit organizations to provide this technical assistance.

The cap on administrative costs for compliance and monitoring activities is set at one-quarter of one percent of the contracted amounts of state investment in the Housing Assistance Program.

Affordable Housing Program. Commerce, with advice and input from the Affordable Housing Advisory Board (AHAB), administers the Affordable Housing Program (Program) which develops and coordinates public and private resources targeted to meet the affordable housing needs of low-income households. Low-income households include a single person, family or unrelated person's living together whose adjusted income is less than 80 percent of AMI, adjusted for household size, for the county where the project is located. Commerce must:

- announce a grant and loan application period of at least 90 days duration through major media throughout the state;
- adopt policies to protect the state's interest in housing projects financed through the

- Program;
- monitor the activities of recipients of grants and loans to determine compliance with the terms and conditions; and
 - develop, with advice and input from the AHAB additional criteria to evaluate applications and recommendations for awarding funds in a cost effective manner.

Activities eligible for assistance include:

- new construction, rehabilitation, or acquisition of housing for low-income households;
- rent subsidies in new construction or rehabilitated multifamily units;
- down payment or closing costs assistance for first-time home buyers;
- mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and
- mortgage insurance guarantees or payments for eligible projects.

Capital Bond Proceeds. Both the Housing Assistance Program and the Affordable Housing Program are eligible to receive and have received appropriations from capital bond proceeds. Legislative appropriations from capital bond proceeds are limited to:

- new construction, rehabilitation, or acquisition of low 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.

Loan repayment funds from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for rent subsidies and matching funds for social services directly related to providing housing for special-need tenants in assisted 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.

Other Housing Trust Fund Requirements. The 2021-2023 Capital Budget authorized \$20 million for housing preservation grants or loans to be awarded competitively for major building improvements, preservation, and system replacements, necessary for the existing HTF portfolio to maintain long-term viability. Commerce must evaluate projects based on the: age of the property; population served; degree to which improvements will result in reduction of operating or utility costs, or both; potential for additional years added to

affordability commitment period of the building; and other criteria Commerce considers necessary. Funds may not be used to add or expand the capacity of the property. A property capital needs assessment must be submitted to Commerce prior to contract execution.

The 2021-2023 Capital Budget also requires Commerce to provide a report:

- on the agency website by June 30th, 2023, outlining the number of homeownership and multifamily rental projects funded by HTF moneys; the percentage of HTF investments made to homeownership and multifamily rental projects; and the total number of households being served at each level—80, 50, and 30 percent— of the AMI for both homeownership and multifamily rental projects; and
- to the Legislature by December 1st each year 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 the department 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.

Commerce must also identify, implement, and apply sustainable building programs for affordable housing projects that receive HTF funding in the state capital budget and review all properties in its HTF real estate portfolio for potential opportunities for energy efficiencies, prioritizing projects based on achieving the greatest expected monetary and energy savings.

Affordable Housing Land Acquisition Revolving Loan Fund Program (LAP). The Legislature created the Affordable Housing Land Acquisition Revolving Loan Fund Program (LAP) in 2007. Commerce contracts with the Commission to administer the program. LAP consists of a revolving loan fund for land acquisition by eligible organizations who 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.

Affordable Housing and Community Facilities Rapid Response Loan Program. The Legislature created the Rapid Response Loan Program in 2008. Commerce contracts with the Commission to administer the program. The Rapid Response Loan Program 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 Engrossed First Substitute Bill: Statutory references to the Housing Assistance Program are removed or recodified under the Affordable Housing Program and the purpose of the 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 the state of Washington.

Commerce is authorized to use funds from the HTF to provide grants and loans to provide affordable housing for persons and families with special housing needs who are low-income households which are defined as having adjusted income less than 80 percent of the AMI, adjusted for household size for the county where the project is located. Commerce must:

- announce a grant and loan application period of at least 60 days on its website;
- use a separate application form for applications to provide homeownership opportunities and evaluate homeownership project applications;
- consider total project cost and per-unit cost compared to similar housing projects constructed or renovated within the same geographic area for the applications, in addition to providing a statewide geographic distribution when awarding funds;
- adopt policies to require projects remain as affordable housing for a minimum of 40 years, unless they are projects that provide homes for low-income first-time home buyers which must remain affordable for a minimum of 25 years;
- monitor the activities of recipients of grants and loans to determine compliance with the terms and conditions to the extent funds are appropriated for this purpose;
- report on its website annually for each funding cycle the number of homeownership and multifamily rental projects funded; the percentage of funding allocated to homeownership and multifamily rental projects; and the total number of households being served at each level—80, 50, and 30 percent— of the AMI for both homeownership and multifamily rental projects;
- beginning December 1, 2023, and continuing every odd-numbered year, provide the appropriate committees of the Legislature with a report of its final cost data for each project funded through the HTF; and
- coordinate with the Commission to identify relevant development costs data and ensure that the measures are consistent across relevant agencies.

The evaluation criteria used by Commerce to review all projects and activities are amended to include:

- projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 40 years, instead of 25;
- 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.

Activities eligible for assistance are amended as follows:

- projects making housing more accessible to families with members who have disabilities must be affordable housing for low-income households with members who have disabilities;
- down payment or closing costs assistance is for low-income first-time home buyers;
- technical assistance is for preconstruction and Commerce must emphasize providing 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 black, indigenous, and persons of color in addition to rural areas and small cities and towns;
 1. Commerce may contract with private organizations, in addition to nonprofit organizations, to provide this technical assistance;
- projects in need of major building improvements, preservation repairs or system replacements are eligible to use funding from HTF based on the age of the property; population served; degree to which improvements will result in reduction of operating or utility costs, or both; potential for additional years added to affordability commitment period of the property; and other criteria Commerce considers necessary;
 1. a property capital needs assessment must be submitted to Commerce prior to contract execution; and
- the following activities are removed from eligibility: rent subsidies; matching funds for social services directly related to housing for special-needs tenants in assisted projects; related services for homeless; mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness; and mortgage insurance guarantee or payments for eligible projects.

All HTF loan or grant recipients, except for those receiving preservation awards, must provide certified final development cost reports to Commerce.

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 Program.

Capital Bond Proceeds. Legislative appropriations from capital bond proceeds are authorized for any eligible activity except administrative costs for housing assistance groups or other eligible organizations.

Loan repayment funds may be used for all activities necessary for the proper functioning of the Program, including providing preservation funding and preconstruction technical assistance.

Up to 3 percent of the appropriations from capital bond proceeds or other new appropriations for affordable housing investments are authorized for administrative costs associated with application, distribution, and project development activities of the Program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

Affordable Housing Advisory Board. The membership of AHAB is expanded to include one representative from an interlocal housing collaboration.

Other. 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 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. Commerce must continue to identify, implement, and apply sustainable building programs for affordable housing projects that receive HTF funding in the state Capital Budget.

The definition of first-time home buyer is amended to include the expanded definition for first-time home buyer in the 2021-2023 capital budget which includes 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; or
- an individual who has only owned a property that is discerned to be uninhabitable by a licensed building inspector.

Eligible organizations include local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations.

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 Original Bill (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: This bill makes how the program runs more clear by putting the way we operate the Housing Trust Fund in the statute. The HTF now includes a total investment of nearly \$1.6 billion for every \$1 the state leverages \$5-\$6 in other funding. Two separate chapters of law have addressed essentially the same programing but this bill condenses them into one. Ongoing

management of this portfolio and monitoring and compliance relies in General Fund state support. The back of the budget amendments have addressed these funding issues in recent years this bill will address it. The oversight and admin responsibilities is a big responsibility so it is critical that resources are available to provide this service.

This bill provides funding that is needed early in the cycle to support projects. We want to build off efforts in providing technical assistance to help rural communities over the last budget cycle to provide predevelopment for underserved communities more broadly. We have had positive feedback from providing technical assistance to organizations new to developing. This work helps identify who will be served, how to navigate the process through review of such things like utilities needs and permitting requirements to help make a successful affordable housing project.

Appreciate the time reduction in the application process, simplification in definitions, prioritizing applications from organizations serving marginalized communities and requiring a dedicated application for affordable homeownership projects. There are some reservation of shortening the application less than 90 days due to capacity challenges of organizations. The bill would be better with a clear acknowledgement of the wide income disparity between rural and urban communities, rural areas should be able to target low income households up to 80% AMI and the legislative priority that 30% of funds go to rural communities should apply to all. We hope a provision to increase the award cap for funding, and that a single project could be awarded, can be included, as this cap amount remains a major barrier.

Persons Testifying (Housing): PRO: Senator Mark Mullet, Prime Sponsor; Carly Colgan, Habitat for Humanity of Washington State; Dave Pringle, Department of Commerce; Lisa Vatske, Washington State Housing Finance Commission; Marty Miller, Office of Rural & Farmworker Housing.

Persons Signed In To Testify But Not Testifying (Housing): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): This is a mostly technical, agency request bill directed at addressing the Department of Commerce's core capital subsidy program for affordable housing, the Housing Trust Fund. Compliance, data integrity, and monitoring rely on general fund support for the 50-year life of a contract. In recent years, budget amendments have addressed this funding structure, and the statute should be updated to reflect this. This bill will bring modernity and more transparency on how the trust fund operates and is funded in the capital budget.

Persons Testifying (Ways & Means): PRO: Senator Mark Mullet, Prime Sponsor; Dave Pringle, Dept. of Commerce.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Directs Commerce to: prioritize at least 10 percent of the funding to organizations that serve and are governed by individuals disproportionately impacted by homelessness; collaborate with public entities that finance affordable housing, including the Housing Finance Commission, cities and counties in conducting joint application reviews and coordinating funding decisions in a timely manner; and award funding to projects at a sufficient level to complete the financing package necessary for an applicant to move forward with the affordable housing project.
- Moves the preference for projects that include an early learning facility to the list of application evaluation criteria.
- Restricts Commerce from establishing a maximum per-applicant award.
- Removes the section that declares it is in the public interest for Commerce to establish a continuously renewable resource known as the housing trust fund.