
ENGROSSED SUBSTITUTE HOUSE BILL 2753

State of Washington

61st Legislature

2010 Regular Session

By House Capital Budget (originally sponsored by Representatives Orwall, Springer, Maxwell, Jacks, Nelson, Simpson, Conway, Ormsby, Chase, and Santos)

READ FIRST TIME 01/25/10.

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; creating a new
5 section; and repealing RCW 39.86.200.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the
8 Washington works housing act of 2010.

9 **Sec. 2.** RCW 43.180.160 and 2009 c 291 s 1 are each amended to read
10 as follows:

11 (1) The total amount of outstanding indebtedness of the commission
12 may not exceed six billion dollars at any time. The calculation of
13 outstanding indebtedness shall include the initial principal amount of
14 an issue and shall not include interest that is either currently
15 payable or that accrues as a part of the face amount of an issue
16 payable at maturity or earlier redemption. Outstanding indebtedness
17 shall not include notes or bonds as to which the obligation of the

1 commission has been satisfied and discharged by refunding or for which
2 payment has been provided by reserves or otherwise.

3 (2)(a) The Washington works housing program is created to increase
4 opportunities for nonprofit organizations and public agencies to
5 purchase, acquire, build, and own real property to be used for
6 affordable housing for low and moderate-income households. The
7 Washington works housing program is intended to provide access to new
8 funding mechanisms and build long-term community equity by increasing
9 the stock of permanently affordable housing owned by nonprofit
10 organizations and public agencies.

11 (b) The Washington works housing program is intended to provide
12 these opportunities for public agencies and nonprofit organizations,
13 including those materially participating as a managing member or
14 general partner of a partnership, limited liability company, or
15 equivalent organization, through the issuance of tax exempt or taxable
16 revenue bonds issued by the commission in conjunction with a subsidy
17 necessary to make bond issues to finance affordable housing properties
18 financially feasible. The program is intended to provide financing for
19 affordable housing that will meet the following income and rent
20 restrictions during the period of initial bond indebtedness and
21 thereafter:

22 (c) During the period of initial bond indebtedness under the
23 program, the owner of the property must meet one of the following
24 requirements: A minimum of twenty percent of the units will be
25 occupied by households earning less than fifty percent of area median
26 income and an additional thirty-one percent of the units will be
27 occupied by persons earning less than eighty percent of area median
28 income; or forty percent of the units will be occupied by households
29 earning less than sixty percent of area median income and an additional
30 eleven percent of the units will be occupied by households earning less
31 than eighty percent of area median income.

32 (d) After the initial bond indebtedness is retired, the rents
33 charged for units in the project will be adjusted to be sufficient to
34 pay reasonable operation and maintenance expenses, including necessary
35 capital needs, and to make reasonable deposits into a reserve account
36 with the intent of providing affordable housing to very low or low-
37 income households for the remaining useful life of the property. The
38 reasonableness of the rent levels must be periodically approved by the

1 commission based on information provided by the owner of the property
2 about income, expenses, and necessary reserve levels. The
3 determination of the commission regarding the reasonableness of the
4 rent levels will be final.

5 (e) The commission will enter into a recorded regulatory agreement
6 with the borrower at the time of the issuance of bonds under the
7 program for the purpose of ensuring that the property will meet the
8 income and rent restrictions established in this section. The
9 commission may charge such compliance fees as necessary to ensure
10 enforcement of the income and rent restrictions during the useful life
11 of the property.

12 (3) One billion dollars of the outstanding indebtedness of the
13 commission is for the primary purpose of implementing the Washington
14 works housing program.

15 (4) If no subsidies are available to make the program in subsection
16 (2) of this section feasible; then the commission may pass a resolution
17 stating these facts and authorize the use of a portion of the one
18 billion dollars of indebtedness intended for the program to support its
19 other bond programs until such time as the one billion dollars is
20 exhausted or subsidies are available to make the program feasible.

21 **Sec. 3.** RCW 39.86.100 and 2001 c 330 s 1 are each amended to read
22 as follows:

23 The federal ~~((tax reform act))~~ internal revenue code of 1986, as
24 amended imposes ~~((an annual))~~ ceilings on the aggregate amount of
25 ~~((federally tax exempt private activity))~~ certain types of bonds,
26 including tax-exempt private activity bonds ~~((for housing, student~~
27 ~~loans, exempt facilities, small issue industrial, redevelopment, and~~
28 ~~certain public utility projects))~~ and other types, that may be issued
29 during any calendar year by or on behalf of states and their political
30 subdivisions. ~~((In 2001, the ceiling will be increased to sixty two~~
31 ~~dollars and fifty cents per capita and in 2002 the ceiling will be~~
32 ~~increased to seventy five dollars per capita, to be indexed annually,~~
33 ~~for 2003 and every year thereafter. However, a study by the department~~
34 ~~of community development indicates that the dollar amount of the state~~
35 ~~ceiling is considerably less than the anticipated dollar amount for~~
36 ~~which issuers would need an allocation from the state ceiling.))~~ The
37 ~~((tax reform act of 1986))~~ code provides a formula for allocating the

1 annual tax-exempt private activity bond ceiling among various issuers
2 of private activity bonds for housing, student loans, exempt
3 facilities, and redevelopment projects within a state, but permits each
4 state to enact a different allocation method that is appropriate to
5 that state's needs. In addition, congress might, from time to time,
6 amend the code by authorizing state ceilings on additional types of
7 bonds. The purpose of this chapter is to provide a flexible and
8 efficient method of allocating the annual state ceiling in Washington
9 in a manner that recognizes the need of the state and its political
10 subdivisions to finance activities or projects that satisfy a
11 substantial public purpose.

12 **Sec. 4.** RCW 39.86.110 and 2009 c 565 s 23 are each reenacted and
13 amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

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

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

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

27 ~~((4))~~ (3) "Bonds" means bonds, notes, or other obligations of an
28 issuer.

29 ~~((5))~~ (4) "Carryforward" is an allocation or reallocation of the
30 state ceiling which is carried from one calendar year to a later year,
31 in accordance with the code.

32 ~~((6))~~ (5) "Code" means the federal internal revenue code of 1986
33 ~~((as it exists on May 8, 1987. It also means the code as amended after~~
34 ~~May 8, 1987, but only if the amendments are approved by the agency~~
35 ~~under RCW 39.86.180)), as amended.~~

36 ~~((7))~~ (6) "Director" means the director of the agency or the
37 director's designee.

1 ~~((+8+))~~ (7) "Exempt facility" means the bond use category which
2 includes all bonds which are exempt facility bonds as described in the
3 code, except those for qualified residential rental projects.

4 ~~((+9+))~~ (8) "Firm and convincing evidence" means documentation that
5 satisfies the director that the issuer is committed to the prompt
6 financing of, and will issue (~~tax-exempt~~) bonds for, the project or
7 program for which it requests an allocation from the state ceiling.

8 ~~((+10+))~~ (9) "Housing" means the bond use category which includes:
9 (a) Mortgage revenue bonds and mortgage credit certificates as
10 described in the code; and (b) exempt facility bonds for qualified
11 residential rental projects as described in the code.

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

17 ~~((+12+))~~ (11) "Issuer" means the state, any agency or
18 instrumentality of the state, any political subdivision, or any other
19 entity authorized to issue (~~private activity~~) bonds under state law.

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

23 (13) "Private activity bonds" means obligations that are private
24 activity bonds as defined in the code or bonds for purposes described
25 in section 1317(25) of the (~~tax reform act~~) federal internal revenue
26 code of 1986, as amended.

27 (14) "Program" means the activities for which housing bonds (~~or~~
28 ~~student loan bonds~~) may be issued.

29 ~~((+"Public utility" means the bond use category which includes~~
30 ~~those bonds described in section 1317(25) of the tax reform act of~~
31 ~~1986.~~

32 ~~(+16+))~~ "Redevelopment" means the bond use category which includes
33 qualified redevelopment bonds as described in the code.

34 ~~((+17+))~~ (16) "Remainder" means that portion of the annual state
35 tax-exempt private activity bond ceiling remaining after initial
36 allocations are made under RCW 39.86.120 for any other bond use
37 category.

1 ~~((18))~~ (17) "Small issue" means the bond use category which
2 includes all industrial development bonds that constitute qualified
3 small issue bonds, as described in the code.

4 ~~((19))~~ (18) "State" means the state of Washington.

5 ~~((20))~~ (19) "State ceiling" means the volume limitation for each
6 calendar year on ~~((tax-exempt-private-activity))~~ specific bond~~((s))~~
7 types, including tax-exempt private activity bonds and other bonds, as
8 imposed by the code.

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

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 39.86 RCW
12 to read as follows:

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

17 **Sec. 6.** RCW 39.86.120 and 2001 c 330 s 2 are each amended to read
18 as follows:

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

| | | | ALTERNATIVE |
|----|----------------------------------|----------------------------|---------------------------------|
| | | | ALLOCATION)) |
| | BOND USE | 2002 and | 2010 and |
| | CATEGORY | ((2001 | THEREAFTER |
| | | THEREAFTER | THEREAFTER |
| 26 | Housing | ((27.5% 30.0% | 32.0%)) <u>47.0%</u> |
| 27 | Small Issue | ((24.5% 24.0%)) | 25.0% |
| 28 | Exempt Facility | ((19.5% 19.0%)) | 20.0% |
| 29 | ((Student Loans 14.5% | 14.0% | 15.0%)) |
| 30 | Public Utility | ((10.0% 10.0%)) | 0.0% |
| 31 | Remainder and | | |
| 32 | Redevelopment | ((4.0% 3.0%)) | 8.0% |

33 (2) Initial allocations may be modified by the agency only to
34 reflect an issuer's carryforward amount. Any reduction of the initial

1 allocation shall be added to the remainder and be available for
2 allocation or reallocation.

3 (3) The remainder shall be allocated by the agency among one or
4 more issuers from any bond use category with regard to the criteria
5 specified in RCW 39.86.130.

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

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

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

26 **Sec. 7.** RCW 39.86.130 and 1987 c 297 s 4 are each amended to read
27 as follows:

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

32 (a) Need of issuers to issue (~~private activity~~) bonds within a
33 bond use category subject to a state ceiling;

34 (b) Amount of the state ceiling available;

35 (c) Public benefit and purpose to be satisfied, including economic
36 development, educational opportunity, and public health, safety, or
37 welfare;

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

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

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

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

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

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

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

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

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

23 (iv) Geographic distribution of projects;

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

25 (vi) Consistency with criteria identified in subsection (1) of this
26 section; and

27 (vii) Order in which requests were received(~~(; and~~

28 ~~(viii) Requirements of the board's umbrella bond program)).~~

29 ~~((d))~~ (c) Exempt facility or redevelopment: Factors which may
30 include:

31 (i) State issuance needs;

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

34 (iii) Order in which requests were received;

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

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

1 ((+e)) (d) Public utility: Factors which may include:

2 (i) Consistency with criteria identified in subsection (1) of this
3 section; and

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

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

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

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

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

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

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

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

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

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

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

33 (4) After receiving an allocation request, the agency shall mail to
34 the requesting issuer a written certificate of approval or notice of
35 denial for an allocation amount, by a date no later than the latest of
36 the following:

37 (a) ~~((Forty five days from May 8, 1987;~~

1 ~~(b)~~) February 1st of the calendar year(~~(, other than 1987,)~~) for
2 which the request is made;

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

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

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

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

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

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

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

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

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

32 (7) If an issuer determines that bonds subject to the state ceiling
33 will not be issued for the project or program for which an allocation
34 was granted, the issuer shall promptly notify the agency in writing so
35 that the allocation may be canceled and the amount may be available for
36 reallocation.

37 (8) Bonds subject to the state ceiling may be issued only to

1 finance the project or program for which a certificate of approval is
2 granted.

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

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

16 **Sec. 9.** RCW 39.86.150 and 1987 c 297 s 6 are each amended to read
17 as follows:

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

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

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

32 **Sec. 10.** RCW 39.86.170 and 1987 c 297 s 8 are each amended to read
33 as follows:

34 A fee schedule shall be established by rule by the agency to assist
35 in support of bond allocation activities. Fees shall reflect costs

1 actually incurred or expected to be incurred by the agency in its bond
2 allocation and bond users clearinghouse activities.

3 **Sec. 11.** RCW 39.86.190 and 2009 c 518 s 19 are each amended to
4 read as follows:

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

12 NEW SECTION. **Sec. 12.** RCW 39.86.200 (Ratification) and 1987 c 297
13 s 11 are each repealed.

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