
SUBSTITUTE SENATE BILL 5747

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Sheldon, Roach, Sellar and Fraser)

Read first time 02/23/95.

1 AN ACT Relating to housing authorities; and amending RCW 35.82.070,
2 39.10.020, 39.10.050, 39.10.060, and 39.10.902.

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

4 **Sec. 1.** RCW 35.82.070 and 1993 c 478 s 17 are each amended to read
5 as follows:

6 An authority shall constitute a public body corporate and politic,
7 exercising public and essential governmental functions, and having all
8 the powers necessary or convenient to carry out and effectuate the
9 purposes and provisions of this chapter, including the following powers
10 in addition to others herein granted:

11 (1) To sue and be sued; to have a seal and to alter the same at
12 pleasure; to have perpetual succession; to make and execute contracts
13 and other instruments, including but not limited to partnership
14 agreements and joint venture agreements, necessary or convenient to the
15 exercise of the powers of the authority; to participate in the
16 organization or the operation of a nonprofit corporation which has as
17 one of its purposes to provide or assist in the provision of housing
18 for persons of low income; and to make and from time to time amend and

1 repeal bylaws, rules and regulations, not inconsistent with this
2 chapter, to carry into effect the powers and purposes of the authority.

3 (2) Within its area of operation: To prepare, carry out, acquire,
4 lease and operate housing projects; to provide for the construction,
5 reconstruction, improvement, alteration or repair of any housing
6 project or any part thereof; to agree to rent or sell dwellings forming
7 part of the projects to or for persons of low income. Where an
8 agreement or option is made to sell a dwelling to a person of low
9 income, the authority may convey the dwelling to the person upon
10 fulfillment of the agreement irrespective of whether the person is at
11 the time of the conveyance a person of low income. Leases, options,
12 agreements, or conveyances may include such covenants as the authority
13 deems appropriate to assure the achievement of the objectives of this
14 chapter.

15 (3) To acquire, lease, rent, sell, or otherwise dispose of any
16 commercial space located in buildings or structures containing a
17 housing project or projects.

18 (4) To arrange or contract for the furnishing by any person or
19 agency, public or private, of services, privileges, works, or
20 facilities for, or in connection with, a housing project or the
21 occupants thereof; and (notwithstanding anything to the contrary
22 contained in this chapter or in any other provision of law) to include
23 in any contract let in connection with a project, stipulations
24 requiring that the contractor and any subcontractors comply with
25 requirements as to minimum wages and maximum hours of labor, and comply
26 with any conditions which the federal government may have attached to
27 its financial aid of the project.

28 (5) To lease or rent any dwellings, houses, accommodations, lands,
29 buildings, structures or facilities embraced in any housing project and
30 (subject to the limitations contained in this chapter) to establish and
31 revise the rents or charges therefor; to own or manage buildings
32 containing a housing project or projects as well as commercial space or
33 other dwelling units that do not constitute a housing project as that
34 term is defined in this chapter: PROVIDED, That notwithstanding the
35 provisions under subsection (1) of this section, dwelling units made
36 available or sold to persons of low income, together with functionally
37 related and subordinate facilities, shall occupy at least fifty percent
38 of the interior space in the total development owned by the authority
39 or at least fifty percent of the total number of units in the

1 development owned by the authority, whichever produces the greater
2 number of units for persons of low income, and for mobile home parks,
3 the mobile home lots made available to persons of low income shall be
4 at least fifty percent of the total number of mobile home lots in the
5 park owned by the authority; to own, hold, and improve real or personal
6 property; to purchase, lease, obtain options upon, acquire by gift,
7 grant, bequest, devise, or otherwise including financial assistance and
8 other aid from the state or any public body, person or corporation, any
9 real or personal property or any interest therein; to acquire by the
10 exercise of the power of eminent domain any real property; to sell,
11 lease, exchange, transfer, assign, pledge, or dispose of any real or
12 personal property or any interest therein; to sell, lease, exchange,
13 transfer, or dispose of any real or personal property or interest
14 therein at less than fair market value to a governmental entity for any
15 purpose when such action assists the housing authority in carrying out
16 its powers and purposes under this chapter, to a low-income person or
17 family for the purpose of providing housing for that person or family,
18 or to a nonprofit corporation provided the nonprofit corporation agrees
19 to sell the property to a low-income person or family or to use the
20 property for the provision of housing for persons of low income for at
21 least twenty years; to insure or provide for the insurance of any real
22 or personal property or operations of the authority against any risks
23 or hazards; to procure or agree to the procurement of insurance or
24 guarantees from the federal government of the payment of any bonds or
25 parts thereof issued by an authority, including the power to pay
26 premiums on any such insurance.

27 (6) To invest any funds held in reserves or sinking funds, or any
28 funds not required for immediate disbursement, in property or
29 securities in which savings banks may legally invest funds subject to
30 their control; to purchase its bonds at a price not more than the
31 principal amount thereof and accrued interest, all bonds so purchased
32 to be canceled.

33 (7) Within its area of operation: To investigate into living,
34 dwelling and housing conditions and into the means and methods of
35 improving such conditions; to determine where slum areas exist or where
36 there is a shortage of decent, safe and sanitary dwelling
37 accommodations for persons of low income; to make studies and
38 recommendations relating to the problem of clearing, replanning and
39 reconstructing of slum areas, and the problem of providing dwelling

1 accommodations for persons of low income, and to cooperate with the
2 city, the county, the state or any political subdivision thereof in
3 action taken in connection with such problems; and to engage in
4 research, studies and experimentation on the subject of housing.

5 (8) Acting through one or more commissioners or other person or
6 persons designated by the authority: To conduct examinations and
7 investigations and to hear testimony and take proof under oath at
8 public or private hearings on any matter material for its information;
9 to administer oaths, issue subpoenas requiring the attendance of
10 witnesses or the production of books and papers and to issue
11 commissions for the examination of witnesses who are outside of the
12 state or unable to attend before the authority, or excused from
13 attendance; to make available to appropriate agencies (including those
14 charged with the duty of abating or requiring the correction of
15 nuisances or like conditions, or of demolishing unsafe or insanitary
16 structures within its area of operation) its findings and
17 recommendations with regard to any building or property where
18 conditions exist which are dangerous to the public health, morals,
19 safety or welfare.

20 (9) To initiate eviction proceedings against any tenant as provided
21 by law. Activity occurring in any housing authority unit that
22 constitutes a violation of chapter 69.41, 69.50 or 69.52 RCW shall
23 constitute a nuisance for the purpose of RCW 59.12.030(5).

24 (10) To exercise all or any part or combination of powers herein
25 granted.

26 No provisions of law with respect to the acquisition, operation or
27 disposition of property by other public bodies shall be applicable to
28 an authority unless the legislature shall specifically so state.

29 (11) To agree (notwithstanding the limitation contained in RCW
30 35.82.210) to make such payments in lieu of taxes as the authority
31 finds consistent with the achievement of the purposes of this chapter.

32 (12) Upon the request of a county or city, to exercise any powers
33 of an urban renewal agency under chapter 35.81 RCW or a public
34 corporation, commission, or authority under chapter 35.21 RCW.
35 However, in the exercise of any such powers the housing authority shall
36 be subject to any express limitations contained in this chapter.

37 (13) To exercise the powers granted in this chapter within the
38 boundaries of any city, town, or county not included in the area in
39 which such housing authority is originally authorized to function:

1 PROVIDED, HOWEVER, The governing or legislative body of such city,
2 town, or county, as the case may be, adopts a resolution declaring that
3 there is a need for the authority to function in such territory.

4 (14) To administer contracts for assistance payments to persons of
5 low income in accordance with section 8 of the United States Housing
6 Act of 1937, as amended by Title II, section 201 of the Housing and
7 Community Development Act of 1974, P.L. 93-383.

8 (15) To sell at public or private sale, with or without public
9 bidding, for fair market value, any mortgage or other obligation held
10 by the authority.

11 (16) To the extent permitted under its contract with the holders of
12 bonds, notes, and other obligations of the authority, to consent to any
13 modification with respect to rate of interest, time and payment of any
14 installment of principal or interest security, or any other term of any
15 contract, mortgage, mortgage loan, mortgage loan commitment, contract
16 or agreement of any kind to which the authority is a party.

17 (17) To make, purchase, participate in, invest in, take assignments
18 of, or otherwise acquire loans to persons of low income to enable them
19 to acquire, construct, reconstruct, rehabilitate, improve, lease, or
20 refinance their dwellings, and to take such security therefor as is
21 deemed necessary and prudent by the authority.

22 (18) To make, purchase, participate in, invest in, take assignments
23 of, or otherwise acquire loans for the acquisition, construction,
24 reconstruction, rehabilitation, improvement, leasing, or refinancing of
25 land, buildings, or developments for housing for persons of low income.
26 For purposes of this subsection, development shall include either land
27 or buildings or both.

28 (a) Any development financed under this subsection shall be subject
29 to an agreement that for at least twenty years the dwelling units made
30 available to persons of low income together with functionally related
31 and subordinate facilities shall occupy at least fifty percent of the
32 interior space in the total development or at least fifty percent of
33 the total number of units in the development, whichever produces the
34 greater number of units for persons of low income. For mobile home
35 parks, the mobile home lots made available to persons of low income
36 shall be at least fifty percent of the total number of mobile home lots
37 in the park. During the term of the agreement, the owner shall use its
38 best efforts in good faith to maintain the dwelling units or mobile
39 home lots required to be made available to persons of low income at

1 rents affordable to persons of low income. The twenty-year requirement
2 under this subsection (18)(a) shall not apply when an authority
3 finances the development by nonprofit corporations or governmental
4 units of dwellings or mobile home lots intended for sale to persons of
5 low and moderate income, and shall not apply to construction or other
6 short-term financing provided to nonprofit corporations or governmental
7 units when the financing has a repayment term of one year or less.

8 (b) In addition, if the development is owned by a for-profit
9 entity, the dwelling units or mobile home lots required to be made
10 available to persons of low income shall be rented to persons whose
11 incomes do not exceed fifty percent of the area median income, adjusted
12 for household size, and shall have unit or lot rents that do not exceed
13 fifteen percent of area median income, adjusted for household size,
14 unless rent subsidies are provided to make them affordable to persons
15 of low income.

16 For purposes of this subsection (18)(b), if the development is
17 owned directly or through a partnership by a governmental entity or a
18 nonprofit organization, which nonprofit organization is itself not
19 controlled by a for-profit entity or affiliated with any for-profit
20 entity that a nonprofit organization itself does not control, it shall
21 not be treated as being owned by a for-profit entity when the
22 governmental entity or nonprofit organization exercises legal control
23 of the ownership entity and in addition, (i) the dwelling units or
24 mobile home lots required to be made available to persons of low income
25 are rented to persons whose incomes do not exceed sixty percent of the
26 area median income, adjusted for household size, and (ii) the
27 development is subject to an agreement that transfers ownership to the
28 governmental entity or nonprofit organization or extends an irrevocable
29 right of first refusal to purchase the development under a formula for
30 setting the acquisition price that is specified in the agreement.

31 (c) Commercial space in any building financed under this subsection
32 that exceeds four stories in height shall not constitute more than
33 twenty percent of the interior area of the building. Before financing
34 any development under this subsection the authority shall make a
35 written finding that financing is important for project feasibility or
36 necessary to enable the authority to carry out its powers and purposes
37 under this chapter.

38 (19) To contract with a public authority or corporation, created by
39 a county, city, or town under RCW 35.21.730 through 35.21.755, to act

1 as the developer for new housing projects or improvement of existing
2 housing projects.

3 (20) To use the supplemental alternative public works contracting
4 procedures set forth in chapter 39.10 RCW in connection with the
5 design, construction, reconstruction, improvement, alteration, repair,
6 or rehabilitation of any of its housing projects.

7 **Sec. 2.** RCW 39.10.020 and 1994 c 132 s 2 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Alternative public works contracting procedure" means the
12 design-build and the general contractor/construction manager
13 contracting procedures authorized in RCW 39.10.050 and 39.10.060,
14 respectively.

15 (2) "Public body" means the state department of general
16 administration; the University of Washington; Washington State
17 University; every city with a population greater than one hundred fifty
18 thousand; every county with a population greater than four hundred
19 fifty thousand; ~~((and))~~ every port district with a population greater
20 than five hundred thousand; and every housing authority under chapter
21 35.82 RCW.

22 (3) "Public works project" means any work for a public body within
23 the definition of the term public work in RCW 39.04.010.

24 **Sec. 3.** RCW 39.10.050 and 1994 c 132 s 5 are each amended to read
25 as follows:

26 (1) Notwithstanding any other provision of law, and after complying
27 with RCW 39.10.030, the following public bodies may utilize the design-
28 build procedure of public works contracting for public works projects
29 authorized under this section: The state department of general
30 administration; the University of Washington; Washington State
31 University; every city with a population greater than one hundred fifty
32 thousand; ~~((and))~~ every county with a population greater than four
33 hundred fifty thousand; and every housing authority under chapter 35.82
34 RCW. For the purposes of this section, "design-build procedure" means
35 a contract between a public body and another party in which the party
36 agrees to both design and build the structure, facility, or other item
37 specified in the contract.

1 (2) Public bodies authorized under this section may utilize the
2 design-build procedure for public works projects valued over ten
3 million dollars where:

4 (a) The construction activities are highly specialized and a
5 design-build approach is critical in developing the construction
6 methodology;

7 (b) The project design is repetitive in nature and is an incidental
8 part of the installation or construction; or

9 (c) The program elements of the project design are simple and do
10 not involve complex functional interrelationships.

11 (3) The state department of general administration may use the
12 design-build procedure authorized in subsection (2)(c) of this section
13 for one project.

14 (4) Contracts for design-build services shall be awarded through a
15 competitive process utilizing public solicitation of proposals for
16 design-build services. The public body shall publish at least once in
17 a legal newspaper of general circulation published in or as near as
18 possible to that part of the county in which the public work will be
19 done, a notice of its request for proposals for design-build services
20 and the availability and location of the request for proposal
21 documents. The request for proposal documents shall include:

22 (a) A detailed description of the project including programmatic,
23 performance, and technical requirements and specifications, functional
24 and operational elements, and minimum and maximum net and gross areas
25 of any building;

26 (b) The reasons for using the design-build procedure;

27 (c) A description of the qualifications, if any, to be required of
28 the proposer;

29 (d) A description of the process the public body will use to
30 evaluate qualifications and proposals, including evaluation factors and
31 the relative weight of factors. Evaluation factors shall include, but
32 not be limited to: Proposal price; ability of professional personnel;
33 past performance on similar projects; ability to meet time and budget
34 requirements; ability to provide a performance and payment bond for the
35 project; recent, current, and projected work loads of the firm; and the
36 concept of the proposal;

37 (e) The form of the contract to be awarded;

38 (f) The maximum allowable construction cost and minority and women
39 enterprise total project goals;

1 (g) The amount to be paid to finalists submitting best and final
2 proposals who are not awarded a design-build contract; and

3 (h) Other information relevant to the project.

4 (5) The public body shall establish a committee to evaluate the
5 proposals based on the factors, weighting, and process identified in
6 the request for proposals. Based on its evaluation, the public body
7 shall select not fewer than three nor more than five finalists to
8 submit best and final proposals. Best and final proposals shall be
9 evaluated and scored based on the factors, weighting, and process
10 identified in the initial request for proposals. Final proposals may
11 not be considered if the proposal cost is greater than the maximum
12 allowable construction cost identified in the initial request for
13 proposals.

14 (6) The public body shall initiate negotiations with the firm
15 submitting the highest scored final proposal. If the public body is
16 unable to execute a contract with that firm, negotiations with that
17 firm may be suspended or terminated and the public body may proceed to
18 negotiate with the next highest scored firm. Public bodies shall
19 continue in accordance with this procedure until a contract agreement
20 is reached or the selection process is terminated. The public body
21 may, in its sole discretion, reject all proposals. The finalist
22 awarded the contract shall provide a performance and payment bond for
23 the contracted amount. The public body shall provide appropriate
24 honorarium payments to finalists submitting best and final proposals
25 who are not awarded a design-build contract. Honorarium payments shall
26 be sufficient to generate meaningful competition among potential
27 proposers on design-build projects.

28 **Sec. 4.** RCW 39.10.060 and 1994 c 132 s 6 are each amended to read
29 as follows:

30 (1) Notwithstanding any other provision of law, and after complying
31 with RCW 39.10.030, the following public bodies may utilize the general
32 contractor/construction manager procedure of public works contracting
33 for public works projects authorized under subsection (2) of this
34 section: The state department of general administration; the
35 University of Washington; Washington State University; every city with
36 a population greater than one hundred fifty thousand; every county with
37 a population greater than four hundred fifty thousand; ~~((and))~~ every
38 port district with a population greater than five hundred thousand; and

1 every housing authority under chapter 35.82 RCW. For the purposes of
2 this section, "general contractor/construction manager" means a firm
3 with which a public body has selected and negotiated a maximum
4 allowable construction cost to be guaranteed by the firm, after
5 competitive selection through formal advertisement and competitive
6 bids, to provide services during the design phase that may include
7 life-cycle cost design considerations, value engineering, scheduling,
8 cost estimating, constructability, alternative construction options for
9 cost savings, and sequencing of work, and to act as the construction
10 manager and general contractor during the construction phase.

11 (2) Public bodies authorized under this section may utilize the
12 general contractor/construction manager procedure for public works
13 projects valued over ten million dollars where:

14 (a) Implementation of the project involves complex scheduling
15 requirements;

16 (b) The project involves construction at an existing facility which
17 must continue to operate during construction; or

18 (c) The involvement of the general contractor/construction manager
19 during the design stage is critical to the success of the project.

20 (3) Contracts for the services of a general contractor/construction
21 manager under this section shall be awarded through a competitive
22 process requiring the public solicitation of proposals for general
23 contractor/construction manager services. Minority and women business
24 enterprise total project goals shall be specified in the public
25 solicitation of proposals and the bid instructions to the general
26 contractor/construction manager finalists. A public body is authorized
27 to include an incentive clause in any contract awarded under this
28 section for savings of either time or cost or both from that originally
29 negotiated. No incentives granted shall exceed five percent of the
30 maximum allowable construction cost. A public body shall establish a
31 committee to evaluate the proposals considering such factors as:
32 Ability of professional personnel; past performance in negotiated and
33 complex projects; ability to meet time and budget requirements;
34 location; recent, current, and projected work loads of the firm; and
35 the concept of their proposal. After the committee has selected the
36 most qualified finalists, these finalists shall submit sealed bids for
37 the percent fee, which is the percentage amount to be earned by the
38 general contractor/construction manager as overhead and profit, on the
39 estimated maximum allowable construction cost and the fixed amount for

1 the detailed specified general conditions work. The maximum allowable
2 construction cost may be negotiated between the public body and the
3 selected firm after the scope of the project is adequately determined
4 to establish a guaranteed contract cost for which the general
5 contractor/construction manager will provide a performance and payment
6 bond. The guaranteed contract cost includes the fixed amount for the
7 detailed specified general conditions work, the negotiated maximum
8 allowable construction cost, the percent fee on the negotiated maximum
9 allowable construction cost, and sales tax. If the public body is
10 unable to negotiate a satisfactory maximum allowable construction cost
11 with the firm selected that the public body determines to be fair,
12 reasonable, and within the available funds, negotiations with that firm
13 shall be formally terminated and the public body shall negotiate with
14 the next low bidder and continue until an agreement is reached or the
15 process is terminated. If the maximum allowable construction cost
16 varies more than fifteen percent from the bid estimated maximum
17 allowable construction cost due to requested and approved changes in
18 the scope by the public body, the percent fee shall be renegotiated.
19 All subcontract work shall be competitively bid with public bid
20 openings. Specific contract requirements for women and minority
21 enterprise participation shall be specified in each subcontract bid
22 package that exceeds ten percent of the public body's estimated project
23 cost. All subcontractors who bid work over two hundred thousand
24 dollars shall post a bid bond and all subcontractors who are awarded a
25 contract over two hundred thousand dollars shall provide a performance
26 and payment bond for their contract amount. All other subcontractors
27 shall provide a performance and payment bond if required by the general
28 contractor/construction manager. Bidding on subcontract work by the
29 general contractor/construction manager or its subsidiaries is
30 prohibited. The general contractor/construction manager may negotiate
31 with the low-responsive bidder in accordance with RCW 39.10.080 or, if
32 unsuccessful in such negotiations, rebid.

33 (4) If the project is completed for less than the agreed upon
34 maximum allowable construction cost, any savings not otherwise
35 negotiated as part of an incentive clause shall accrue to the public
36 body. If the project is completed for more than the agreed upon
37 maximum allowable construction cost, excepting increases due to any
38 contract change orders approved by the public body, the additional cost

1 shall be the responsibility of the general contractor/construction
2 manager.

3 **Sec. 5.** RCW 39.10.902 and 1994 c 132 s 15 are each amended to read
4 as follows:

5 The following acts or parts of acts, as now existing or hereafter
6 amended, are each repealed, effective July 1, 1997:

- 7 (1) RCW 39.10.010 and 1994 c 132 s 1;
- 8 (2) RCW 39.10.020 and 1995 c ... s 2 & 1994 c 132 s 2;
- 9 (3) RCW 39.10.030 and 1994 c 132 s 3;
- 10 (4) RCW 39.10.040 and 1994 c 132 s 4;
- 11 (5) RCW 39.10.050 and 1995 c ... s 3 & 1994 c 132 s 5;
- 12 (6) RCW 39.10.060 and 1995 c ... s 4 & 1994 c 132 s 6;
- 13 (7) RCW 39.10.070 and 1994 c 132 s 7;
- 14 (8) RCW 39.10.080 and 1994 c 132 s 8;
- 15 (9) RCW 39.10.090 and 1994 c 132 s 9;
- 16 (10) RCW 39.10.100 and 1994 c 132 s 10;
- 17 (11) RCW 39.10.110 and 1994 c 132 s 11;
- 18 (12) RCW 39.10.120 and 1994 c 132 s 12;
- 19 (13) RCW 39.10.900 and 1994 c 132 s 13;
- 20 (14) RCW 39.10.901 and 1994 c 132 s 14; and
- 21 (15) RCW 39.10.902 and 1995 c ... s 5 & 1994 c 132 s 15.

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