

ESHB 2753 - S COMM AMD
By Committee on Ways & Means

ADOPTED 03/20/2010

1 Strike everything after the enacting clause and insert the
2 following:

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

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

7 (1) The total amount of outstanding indebtedness of the commission
8 may not exceed six billion dollars at any time. The calculation of
9 outstanding indebtedness shall include the initial principal amount of
10 an issue and shall not include interest that is either currently
11 payable or that accrues as a part of the face amount of an issue
12 payable at maturity or earlier redemption. Outstanding indebtedness
13 shall not include notes or bonds as to which the obligation of the
14 commission has been satisfied and discharged by refunding or for which
15 payment has been provided by reserves or otherwise.

16 (2)(a) The Washington works housing program is created to increase
17 opportunities for nonprofit organizations and public agencies to
18 purchase, acquire, build, and own real property to be used for
19 affordable housing for low and moderate-income households. The
20 Washington works housing program is intended to provide access to new
21 funding mechanisms and build long-term community equity by increasing
22 the stock of permanently affordable housing owned by nonprofit
23 organizations and public agencies.

24 (b) The Washington works housing program is intended to provide
25 these opportunities for public agencies and nonprofit organizations,
26 including those materially participating as a managing member or
27 general partner of a partnership, limited liability company, or
28 equivalent organization, through the issuance of tax exempt or taxable
29 revenue bonds issued by the commission in conjunction with a subsidy

1 necessary to make bond issues to finance affordable housing properties
2 financially feasible. The program is intended to provide financing for
3 affordable housing that will meet the following income and rent
4 restrictions during the period of initial bond indebtedness and
5 thereafter:

6 (c) During the period of initial bond indebtedness under the
7 program, the owner of the property must meet one of the following
8 requirements: A minimum of twenty percent of the units will be
9 occupied by households earning less than fifty percent of area median
10 income and an additional thirty-one percent of the units will be
11 occupied by persons earning less than eighty percent of area median
12 income; or forty percent of the units will be occupied by households
13 earning less than sixty percent of area median income and an additional
14 eleven percent of the units will be occupied by households earning less
15 than eighty percent of area median income.

16 (d) After the initial bond indebtedness is retired, the rents
17 charged for units in the project will be adjusted to be sufficient to
18 pay reasonable operation and maintenance expenses, including necessary
19 capital needs, and to make reasonable deposits into a reserve account
20 with the intent of providing affordable housing to very low or low-
21 income households for the remaining useful life of the property. The
22 reasonableness of the rent levels must be periodically approved by the
23 commission based on information provided by the owner of the property
24 about income, expenses, and necessary reserve levels. The
25 determination of the commission regarding the reasonableness of the
26 rent levels will be final.

27 (e) The commission will enter into a recorded regulatory agreement
28 with the borrower at the time of the issuance of bonds under the
29 program for the purpose of ensuring that the property will meet the
30 income and rent restrictions established in this section. The
31 commission may charge such compliance fees as necessary to ensure
32 enforcement of the income and rent restrictions during the useful life
33 of the property.

34 (3) One billion dollars of the outstanding indebtedness of the
35 commission is for the primary purpose of implementing the Washington
36 works housing program.

37 (4) If no subsidies are available to make the program in subsection
38 (2) of this section feasible; then the commission may pass a resolution

1 stating these facts and authorize the use of a portion of the one
2 billion dollars of indebtedness intended for the program to support its
3 other bond programs until such time as the one billion dollars is
4 exhausted or subsidies are available to make the program feasible.

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

7 The federal (~~(tax reform act)~~) internal revenue code of 1986, as
8 amended imposes (~~(an annual)~~) ceilings on the aggregate amount of
9 (~~(federally tax-exempt private activity)~~) certain types of bonds,
10 including tax-exempt private activity bonds (~~(for housing, student~~
11 ~~loans, exempt facilities, small issue industrial, redevelopment, and~~
12 ~~certain public utility projects)) and other types, that may be issued
13 during any calendar year by or on behalf of states and their political
14 subdivisions. (~~(In 2001, the ceiling will be increased to sixty two~~
15 ~~dollars and fifty cents per capita and in 2002 the ceiling will be~~
16 ~~increased to seventy five dollars per capita, to be indexed annually,~~
17 ~~for 2003 and every year thereafter. However, a study by the department~~
18 ~~of community development indicates that the dollar amount of the state~~
19 ~~ceiling is considerably less than the anticipated dollar amount for~~
20 ~~which issuers would need an allocation from the state ceiling.)) The
21 (~~(tax reform act of 1986)~~) code provides a formula for allocating the
22 annual tax-exempt private activity bond ceiling among various issuers
23 of private activity bonds for housing, student loans, exempt
24 facilities, and redevelopment projects within a state, but permits each
25 state to enact a different allocation method that is appropriate to
26 that state's needs. In addition, congress might, from time to time,
27 amend the code by authorizing state ceilings on additional types of
28 bonds. The purpose of this chapter is to provide a flexible and
29 efficient method of allocating the annual state ceiling in Washington
30 in a manner that recognizes the need of the state and its political
31 subdivisions to finance activities or projects that satisfy a
32 substantial public purpose.~~~~

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

35 The definitions in this section apply throughout this chapter
36 unless the context clearly requires otherwise.

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

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

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

12 ~~((4))~~ (3) "Bonds" means bonds, notes, or other obligations of an
13 issuer.

14 ~~((5))~~ (4) "Carryforward" is an allocation or reallocation of the
15 state ceiling which is carried from one calendar year to a later year,
16 in accordance with the code.

17 ~~((6))~~ (5) "Code" means the federal internal revenue code of 1986
18 (~~as it exists on May 8, 1987. It also means the code as amended after~~
19 ~~May 8, 1987, but only if the amendments are approved by the agency~~
20 ~~under RCW 39.86.180)), as amended.~~

21 ~~((7))~~ (6) "Director" means the director of the agency or the
22 director's designee.

23 ~~((8))~~ (7) "Exempt facility" means the bond use category which
24 includes all bonds which are exempt facility bonds as described in the
25 code, except those for qualified residential rental projects.

26 ~~((9))~~ (8) "Firm and convincing evidence" means documentation that
27 satisfies the director that the issuer is committed to the prompt
28 financing of, and will issue (~~tax-exempt~~) bonds for, the project or
29 program for which it requests an allocation from the state ceiling.

30 ~~((10))~~ (9) "Housing" means the bond use category which includes:
31 (a) Mortgage revenue bonds and mortgage credit certificates as
32 described in the code; and (b) exempt facility bonds for qualified
33 residential rental projects as described in the code.

34 ~~((11))~~ (10) "Initial allocation" means the portion or dollar
35 value of the annual state tax-exempt private activity bond ceiling
36 which initially in each calendar year is allocated to a bond use
37 category for the issuance of private activity bonds, in accordance with
38 RCW 39.86.120.

1 ~~((12))~~ (11) "Issuer" means the state, any agency or
2 instrumentality of the state, any political subdivision, or any other
3 entity authorized to issue ~~((private activity))~~ bonds under state law.

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

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

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

13 ~~((("Public utility" means the bond use category which includes~~
14 ~~those bonds described in section 1317(25) of the tax reform act of~~
15 ~~1986.~~

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

18 ~~((17))~~ (16) "Remainder" means that portion of the annual state
19 tax-exempt private activity bond ceiling remaining after initial
20 allocations are made under RCW 39.86.120 for any other bond use
21 category.

22 ~~((18))~~ (17) "Small issue" means the bond use category which
23 includes all industrial development bonds that constitute qualified
24 small issue bonds, as described in the code.

25 ~~((19))~~ (18) "State" means the state of Washington.

26 ~~((20))~~ (19) "State ceiling" means the volume limitation for each
27 calendar year on ~~((tax-exempt private activity))~~ specific bond~~((s))~~
28 types, including tax-exempt private activity bonds and other bonds, as
29 imposed by the code.

30 ~~((21))~~ (20) "Student loans" means the bond use category which
31 includes qualified student loan bonds as described in the code.

32 NEW SECTION. Sec. 5. A new section is added to chapter 39.86 RCW
33 to read as follows:

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

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

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

			ALTERNATIVE ALLOCATION))
	BOND USE	2002 and	2010 and
	CATEGORY	((2001	<u>THEREAFTER</u>
10	Housing	((27.5%	30.0%)) 32.0%
11	Small Issue	((24.5%	24.0%)) 25.0%
12	Exempt Facility	((19.5%	19.0%)) 20.0%
13	Student Loans	((14.5%	14.0%)) 15.0%
14	Public Utility	((10.0%	10.0%)) 0.0%
15	Remainder and		
16	Redevelopment	((4.0%	3.0%)) 8.0%

17 (2) Initial allocations may be modified by the agency only to
18 reflect an issuer's carryforward amount. Any reduction of the initial
19 allocation shall be added to the remainder and be available for
20 allocation or reallocation.

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

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

35 (5)(a) Prior to (~~September 1~~) July 1st of each calendar year, any
36 available portion of an initial allocation may be allocated or

1 reallocated only to an issuer within the same bond use category, except
2 that the remainder category, or portions thereof, may be allocated at
3 any time to any bond use category.

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

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

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

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

16 (b) Amount of the state ceiling available;

17 (c) Public benefit and purpose to be satisfied, including economic
18 development, educational opportunity, and public health, safety, or
19 welfare;

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

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

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

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

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

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

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

- 1 (ii) The level of unemployment existing in the geographic area
2 likely to be affected by the project;
- 3 (iii) A commitment to providing employment opportunities to low-
4 income persons in cooperation with the employment security department;
- 5 (iv) Geographic distribution of projects;
- 6 (v) The number of persons who will benefit from the project;
- 7 (vi) Consistency with criteria identified in subsection (1) of this
8 section; and
- 9 (vii) Order in which requests were received(~~(+and~~
10 ~~(viii) Requirements of the board's umbrella bond program)~~)).
- 11 (d) Exempt facility or redevelopment: Factors which may include:
- 12 (i) State issuance needs;
- 13 (ii) Consistency with criteria identified in subsection (1) of this
14 section;
- 15 (iii) Order in which requests were received;
- 16 (iv) The proportionate number of persons in relationship to the
17 size of the community who will benefit from the project; and
- 18 (v) The unique timing and issuance needs of large scale projects
19 that may require allocations in more than one year.
- 20 (e) Public utility: Factors which may include:
- 21 (i) Consistency with criteria identified in subsection (1) of this
22 section; and
- 23 (ii) Timing needs for issuance of bonds over a multi-year period.

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

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

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

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

33 ~~((+ii+))~~ (b) The bond use category from which the allocation sought
34 would be made;

35 ~~((+iii+))~~ (c) The project or program for which the allocation is
36 requested;

1 (~~(iv)~~) (d) The financing schedule for which the allocation is
2 needed; and

3 (~~(v)~~) (e) Any other such information required by the agency,
4 including information which corresponds to the allocation criteria of
5 RCW 39.86.130.

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

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

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

20 (a) (~~Forty five days from May 8, 1987;~~
21 ~~(b)~~) February 1st of the calendar year(~~, other than 1987,~~) for
22 which the request is made;

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

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

28 (5)(a) For requests of the state ceiling of any calendar year, the
29 following applies to all bond use categories except housing and student
30 loans:

31 (i) Except for housing and student loans, any allocations granted
32 prior to April 1st, for which bonds have not been issued by (~~September~~
33 ~~1~~) July 1st of the same calendar year, shall revert to the agency on
34 (~~September 1~~) July 1st of the same calendar year for reallocation
35 unless an extension or carryforward is granted;

36 (ii) Except for housing and student loans, any allocations granted
37 on or after April 1st, for which bonds have not been issued by

1 ((~~December 15~~)) October 15th of the same calendar year, shall revert to
2 the agency on ((~~December 15~~)) October 15th of the same calendar year
3 for reallocation unless an extension or carryforward is granted.

4 (b) For each calendar year, any housing or student loan
5 allocations, for which bonds have not been issued by December 15th of
6 the same calendar year, shall revert to the agency on December 15th of
7 the same calendar year for reallocation unless an extension or
8 carryforward is granted.

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

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

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

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

20 (8) Bonds subject to the state ceiling may be issued only to
21 finance the project or program for which a certificate of approval is
22 granted.

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

29 (10) If the total amount of ((~~tax-exempt~~)) bonds issued under the
30 authority of a state ceiling for a project or program is less than the
31 amount allocated, the remaining portion of the allocation shall revert
32 to the agency for reallocation in accordance with the criteria in RCW
33 39.86.130. If the amount of ((~~tax-exempt~~)) bonds actually issued under
34 the authority of a state ceiling is greater than the amount allocated,
35 the entire allocation shall be disallowed.

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

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

6 (2) Prior to the end of each calendar year, the agency shall
7 allocate or reallocate any unused portions of the state ceiling among
8 one or more issuers as carryforward, to be used within three years, in
9 accordance with the code and relevant criteria described in RCW
10 39.86.130.

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

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

17 A fee schedule shall be established by rule by the agency to assist
18 in support of bond allocation activities. Fees shall reflect costs
19 actually incurred or expected to be incurred by the agency in its bond
20 allocation and bond users clearinghouse activities.

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

23 By February 1st of each even-numbered year, the agency shall
24 summarize for the legislature each previous year's bond allocation
25 requests and issuance. Beginning in ((~~June of 1988~~)) February 2010 and
26 thereafter in ((~~June~~)) February of each even-numbered year, the agency
27 shall also submit a biennial report summarizing usage of the bond
28 allocation proceeds and any policy concerns for future bond
29 allocations.

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

ADOPTED 03/20/2010

1 On page 1, line 1 of the title, after "program;" strike the
2 remainder of the title and insert "amending RCW 43.180.160, 39.86.100,
3 39.86.120, 39.86.130, 39.86.140, 39.86.150, 39.86.170, and 39.86.190;
4 reenacting and amending RCW 39.86.110; adding a new section to chapter
5 39.86 RCW; creating a new section; and repealing RCW 39.86.200."

EFFECT: Continues to reserve fifteen percent of state tax-exempt revenue bond authority for student loans.

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