SENATE BILL REPORT
SB 5361

As of February 7, 2019

Title: An act relating to enacting the recommendations of the joint legislative audit and review committee's report analyzing development costs for low-income housing.

Brief Description: Enacting the recommendations of the joint legislative audit and review committee's report analyzing development costs for low-income housing.

Sponsors: Senators Zeiger, Kuderer, Warnick and Das.

Brief History:
Committee Activity: Housing Stability & Affordability: 2/06/19.

Brief Summary of Bill

- Implements recommendations of the Joint Legislative Audit and Review Committee's report analyzing development costs for low-income housing under the federal Low-Income Housing Tax Credit and Housing Trust Fund programs.

SENATE COMMITTEE ON HOUSING STABILITY & AFFORDABILITY

Staff: Brandon Popovac (786-7465)

Background: Housing Finance Commission. The Housing Finance Commission (Commission) is a finance authority established to act as a conduit to make additional funds available at affordable rates to help provide housing throughout the state. The Commission is financially self-supported and does not receive funding from the state.

To provide financing, the Commission may:
- issue bonds;
- make loans to or deposits with mortgage lenders for the purpose of making mortgage loans;
- make loans for down payment assistance to home buyers; and
- participate in federal and other government programs to carry out its purpose.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Low-Income Housing Tax Credit Program. The Commission administers the Low-Income House Tax Credit (LIHTC) program, which finances construction of low-income housing through federal tax incentives. Housing financed by LIHTC must be affordable to households with incomes at 60 percent or less than the area median income and must remain affordable to low-income tenants for at least 30 years. LIHTC provides an indirect subsidy to housing developers where federal tax credits are allocated at the state level. The Commission awards these state tax credits to developers under two different LIHTC programs.

Under one LIHTC program, after a competitive application process, a developer may receive a 9 percent tax credit that typically generates equity for 70 percent of a projects' development cost. Non-profits and housing authorities are typical recipients, but for-profit developers are eligible despite not receiving this tax credit in over five years.

Under a second LIHTC program, a developer may receive a combination of a 4 percent tax credit and tax-exempt bonds that typically generates equity for 30 percent of a project's development costs as long as 50 percent of the costs are financed by tax-exempt bonds. Typical eligible recipients are non-profits, housing authorities, and for-profit developers.

Under both LIHTC programs, the developer transfers the credits to an investor that funds the housing. The investor becomes a majority owner of the housing and uses the credit to reduce its federal income tax liability. The developer uses the money received from the investor to build low-income housing.

Department of Commerce. The Department of Commerce (Commerce) administers the Housing Assistance Program and the Affordable Housing Program. Both of these programs, commonly referred to as the Housing Trust Fund (HTF), fund acquisition, new construction, and rehabilitation of low-income housing units. The Housing Assistance Program uses the HTF and other appropriations to finance loans and grant projects that provide housing for households with incomes at 80 percent or less than the area median income. The Affordable Housing Program uses the HTF and other appropriations for the purpose of developing and coordinating public and private resources targeted to meet the affordable housing needs of households below 80 percent of the project area's median income. The maximum award is $3 million per project and, once built, the housing must remain affordable for at least 40 years.

Joint Legislative Audit and Review Committee Study. In 2017, the Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to analyze the costs of developing low-income housing and compare them with market-rate costs. Because market-rate data was not available, JLARC analyzed development costs for two state low-income housing development programs, LIHTC and the HTF. Six LIHTC case studies found development costs were within or below estimates form independent experts. The study also found that Commerce lacks data to monitor final development costs of HTF projects. The study recommended that: the Commission identify and evaluate options for increasing the participation of for-profit developers in the 9 percent LIHTC program, Commerce collect final development cost data from the HTF projects it funds, and the Commission and Commerce report low-income development cost data to the Legislature annually.

Summary of Bill: The Commission must identify and evaluate options for increasing the involvement of for-profit participants in the 9 percent LIHTC program, including identifying best practices and procedures for the 4 percent LIHTC program, and report such results to the Legislature by December 1, 2019.

Both the Commission and Commerce must collaborate to develop and implement a process for collecting certified final development cost data from each recipient under their respective programs. Both must use this data as part of its cost containment policy. Both must annually report to the Legislature on its cost data for the previous year, including total development cost per unit for each completed project, descriptive statistics, regional cost variation, and any other costs deemed necessary to improve cost controls and enhance understanding of development costs.

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: PRO: The study by JLARC made three recommendations to the Legislature based on analyzing six different projects, which were found to have development costs within or below estimates as expected by independent estimator. JLARC made three recommendations that the Commission and Commerce are already moving forward on. This legislative body acknowledges these recommendations that came out of the JLARC study.

There is no dispute that nonprofit housing costs more to produce than market-rate housing. The GAO study does not address the issue of why nonprofits are producing housing at a higher per unit cost than market rate. A review of the Heartland report data found that unit size was a potential issue along with the density of the projects. The Legislature needs to act as an oversight board to require these agencies to produce and report on data to understand why we are not producing efficiently. A lot of it is determined by rules and regulations and also a lack of density in projects.

OTHER: The Commission is cooperating with JLARC on this study and have concurred with all of the recommendations. The Commission has started implementing the recommendations, particularly the evaluation requirement to include more for-profit developers in the 9 percent program. The Commission is also coordinating with Commerce on the collection of cost data that is typically done through an independent certified public accountant. A GAO study of ten states and large cities shows Washington state costs are right in the middle. The Commission's 9 percent program produces 30 percent more housing units for people at the very lowest income level then the other nine states in two large cities and has the lowest soft costs of any project in any program.

Commerce has already started working with the Commission and with stakeholders to engage our policy board in looking into ways of how we can implement the recommendations efficiently without duplication. Commerce will share data with the Commission, particularly on the projects that include tax credits. When Commerce reviews applications for awards, it employs a cost containment policy in its scoring criteria and it reviews and ranks the projects. Updated costs are collected again before Commerce executes the contracts, before project construction, and during construction. An inspector also goes on site and tracks construction costs and reports to Commerce on a regular basis. Commerce can implement the recommendations within its current authority and budget levels.

Persons Testifying: PRO: Senator Hans Zeiger, Prime Sponsor; Roger Valdez, Seattle For Growth.

OTHER: Kim Herman, Washington State Housing Finance Commission; Lisa Vatske, Washington State Housing Finance Commission; Corina Grigoras, Department of Commerce.

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