# HOUSE BILL REPORT
# SSB 5386

**As Reported by House Committee On:**
Housing

**Title:** An act relating to reducing administrative complexity by increasing transparency of revenue flows for activities funded by document recording fees.

**Brief Description:** Reducing administrative complexity by increasing transparency of revenue flows for activities funded by document recording fees.

**Sponsors:** Senate Committee on Housing (originally sponsored by Senators Robinson, Kuderer, Saldaña and Wilson, C.; by request of Department of Commerce).

**Brief History:**
**Committee Activity:**
Housing: 3/16/23, 3/20/23 [DP].

**Brief Summary of Substitute Bill**

- Consolidates the four housing-related document-recording surcharges into one new surcharge with simplified distributions and uniform exemptions.
- Eliminates the Transitional Housing Operating and Rent Account.
- Removes the requirement for the Office of Financial Management to secure an independent expenditure review of state surcharge funds received and deposited into the Home Security Fund Account on a biennial basis.
- Removes the requirement for the Department of Commerce to include the amount of expenditures for private rental housing payments in the report on state and local homelessness document-recording fee expenditures by county.

**HOUSE COMMITTEE ON HOUSING**

*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.*

**Majority Report:** Do pass. Signed by 13 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Hutchins, Low, Reed and Taylor.

**Staff:** Audrey Vasek (786-7383).

**Background:**

<u>Document Recording</u>.
Document recording serves a public accessibility and preservation function. Recording a real estate conveyance can also sometimes provide protection against later legal challenges to the validity of the conveyance. Generally, the county auditor will accept any document for recording that meets the formatting requirements and has the appropriate fees and surcharges paid. County auditors do not review recorded documents for content accuracy or legality.

While there is no comprehensive list of the types of documents that may be recorded, many documents that are recorded are related to real estate, such as deeds, liens, deeds of trust, covenants, easements, leases, plats, and surveys. Other examples of the types of documents that are sometimes recorded include community property agreements; certain notices; divorce decrees; and foreign birth, marriage, and death certificates.

*Fees and Surcharges*.
Fees for recording a document are set by statute, collected by the county auditors, and distributed to certain funds and programs. There is a $5 fee for recording the first page of a document and an additional $1 fee for recording each additional page of a document.

In addition to the document-recording fees, there are several document-recording surcharges created by statute, including surcharges to support preservation and accessibility of historic documents, the State Library Operations, the State Library Archives Building, urban planning, and affordable housing. These surcharges generally apply to all documents recorded, although some surcharges include exemptions for certain types of documents.

<u>Housing Surcharges</u>.
The county auditors collect and distribute the following four housing-related document-recording surcharges:
- a $13 Affordable Housing for All (AHA) surcharge;
- a $62 Local Homeless Housing and Assistance surcharge;
- an $8 additional Local Homeless Housing and Assistance surcharge; and
- a $100 housing surcharge.

*Affordable Housing for All Surcharge.*
Of the $13 AHA surcharge, the county may retain up to 5 percent for administrative costs.

Of the remainder, 60 percent is retained by the county for eligible housing activities that serve very low-income households with incomes at or below 50 percent of the area median income, and 40 percent is distributed to the state. The state's share of $10 of the fee is deposited into the AHA Account, to be used by the Department of Commerce (Commerce) for housing and shelter for extremely low-income households with incomes at or below 30 percent of the area median income. The state's share of $3 of the fee is deposited into the Landlord Mitigation Program (LMP) Account to provide financial support to landlords of tenants who receive rental assistance.

*Local Homeless Housing and Assistance Surcharge.*
Of the $62 Local Homeless Housing and Assistance surcharge, 2 percent is retained by the county auditor for collection of the fee. Of the remainder, 60 percent is retained by the county for local homeless housing and assistance, and 40 percent is distributed to the state for deposit in the Home Security Fund (HSF) Account.

Of the state portion, Commerce may use 12.5 percent to administer the Homeless Housing Program. Of the remaining 87.5 percent, 45 percent must be set aside for the use of private rental housing payments, and the remaining funds are to be used to provide housing and shelter for homeless people and fund the Homeless Housing Grant Program. Of the county portion, 6 percent may be used for the collection and local distribution of these funds and administrative costs related to the county's homeless housing plan. The remaining amount retained by the county must be used for programs that directly accomplish the goals of the county's homeless housing plan, with a certain percentage set aside for each city in the county that operates its own homeless housing program.

*Additional Local Homeless Housing and Assistance Surcharge.*
Of the $8 Additional Local Homeless Housing and Assistance surcharge, 90 percent is retained by the county for local homeless housing and assistance, and 10 percent is distributed to the state for deposit in the HSF Account. Of the state portion, Commerce may use the funds for administering the Homeless Housing Program, and any remaining funds may be used to provide housing and shelter for homeless people and fund the Homeless Housing Grant Program. Of the county portion, 6 percent may be used for the collection and local distribution of these funds and administrative costs related to the county's homeless housing plan. The remaining amount retained by the county must be used for programs that directly accomplish the goals of the county's homeless housing plan, with a certain percentage set aside for each city in the county that operates its own homeless housing program.

*$100 Housing Surcharge*.
Of the $100 housing surcharge, 20 percent is distributed into the AHA Account to provide permanent supportive housing (PSH) operations, maintenance, and service costs. Until June 30, 2023, 4 percent is distributed into the LMP Account and 76 percent is distributed into the HSF Account. After June 30, 2023, 2 percent is distributed into the LMP Account and 78 percent is distributed into the HSF Account. No less than 60 percent of the funds

deposited into the HSF Account are to be used for project-based vouchers for nonprofit housing providers or public housing authorities; housing services; rapid rehousing; emergency housing; or acquisition, operations, maintenance, and service costs for PSH for persons with disabilities. Any PSH programs administered by the Office of Apple Health and Homes are eligible to use these funds. Additionally, these funds may be used for eviction prevention rental assistance, foreclosure prevention services, dispute resolution center eviction prevention services, rental assistance for people experiencing homelessness, and tenant education and legal assistance.

*Exemptions from the Surcharges.*
The $62 Local Homeless Housing and Assistance surcharge and the $100 housing surcharge do not apply to assignments or substitutions of previously recorded deeds of trust; documents recording a birth, marriage, divorce, or death; any recorded documents otherwise exempted from a recording fee or additional surcharges under state law; marriage licenses issued by the county auditor; or documents recording a federal, state, county, city, or water-sewer district, or wage lien or satisfaction of lien.

The $13 AHA surcharge and the $8 Additional Local Homeless Housing and Assistance surcharge do not apply to assignments or substitutions of previously recorded deeds of trust or to documents recording a federal, water-sewer district, or wage lien, or satisfaction of lien.

Home Security Fund Account.
The HSF Account is an appropriated account that may be used only for homeless housing programs, including the Eviction Prevention Rental Assistance Program. The name of the HSF Account was revised in 2007, changing it from the "Homeless Housing Account" to the "Home Security Fund Account."

Beginning July 1, 2023, Commerce must award funds for project-based vouchers for nonprofit housing providers and related services, rapid rehousing, and housing acquisition to eligible grantees such that 15 percent of funding is distributed based on whether a county can demonstrate that it has met or exceeded certain performance metrics to prevent and reduce homelessness. Counties who fail to meet or exceed the targets specified by Commerce must enter into a corrective action plan and may be subject to reductions in the performance-based portion of the funds. Commerce may redistribute funds that are unspent due to a county's lack of compliance with a corrective action plan to other counties that have met their performance targets.

The Office of Financial Management must secure an independent expenditure review of state surcharge funds received and deposited into the account on a biennial basis. The purpose of the expenditure review is to assess the consistency in achieving policy priorities within the private market rental housing segment for housing persons who are experiencing homelessness. The expenditure review is due February 1 of each even-numbered year.

Affordable Housing for All Account.
The AHA Account is an appropriated account that may be used only for affordable housing programs, including operations, maintenance, and services for PSH.

Landlord Mitigation Program Account.
The LMP Account is a nonappropriated account administered by Commerce to reimburse landlords for eligible claims under the LMP, including certain claims related to:
- renting private market rental units to low-income tenants using housing subsidy programs;
- unpaid judgments in eviction proceedings for nonpayment of rent where the tenant is low-income, resource-limited, or experiencing hardship;
- unpaid rent that accrued between March 1, 2020, and six months following the expiration of the Governor's eviction moratorium, if the tenant is low-income, resource-limited, or experiencing hardship and has voluntarily vacated or abandoned the tenancy; and
- damages to rental property when a tenant has terminated a rental agreement due to domestic violence, sexual assault, unlawful harassment, or stalking, and the property has sustained damage beyond ordinary wear and tear.

Funds deposited into the LMP Account must be prioritized for claims related to the first and fourth bullets above and may only be used for other allowable costs when funding in the account exceeds the amount needed to pay the prioritized claims.

Transitional Housing Operating and Rent Account.
The Transitional Housing Operating and Rent Account is a nonappropriated account administered by Commerce that may be used only for the purpose of the Transitional Housing Operating and Rent Program. The purpose of the program is to assist individuals and families who are homeless, or who are at risk of becoming homeless, to secure and retain safe, decent, and affordable housing by providing grant money to eligible organizations for rental assistance, case management services, operating expenses of transitional housing facilities that serve homeless families with children, and administrative costs.

Reporting Requirements.
By December 1 of each year, Commerce must provide an update on the state's homeless housing five-year strategic plan and its activities for the prior fiscal year. Among other things, the report must include information about the state and local homelessness document-recording fee expenditure by county, including the total amount of fee spending, percentage of total spending from fees, the number of people served by major assistance type, and the amount of expenditures for private rental housing payments required by the $62 Local Homeless Housing and Assistance surcharge. The report must be posted on Commerce's website.

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**Summary of Bill:**

Consolidated Housing Surcharge.
The four housing-related document-recording surcharges, including the $13 AHA surcharge, the $62 Local Homeless Housing and Assistance surcharge, the $8 Additional Local Homeless Housing and Assistance surcharge, and the $100 housing surcharge, are each repealed and consolidated into one new $183 housing surcharge, which is distributed as follows:

- 31 percent for the county;
- 54 percent for the HSF Account;
- 13 percent for the AHA Account; and
- 2 percent for the LMP Account.

*County Distribution*.
One percent of the surcharge is retained by the county auditor for its fee collection activities. Thirty percent of the surcharge is retained by the county to be used as follows:

- up to 10 percent for the county's administration and local distribution of the surcharge funds, and administrative costs related to the county's homeless housing plan;
- at least 75 percent to be used by the county to accomplish the purposes of the county's homeless housing plan, with a certain percentage set aside for each city in the county that operates its own local homeless housing program; and
- at least 15 percent to be used by the county for eligible housing activities that serve extremely low- and very low-income households, with a priority for activities that serve extremely low-income households.

Eligible housing activities funded under this latter 15 percent are limited to:

- acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households;
- supporting building operation and maintenance costs of housing projects or units that are eligible to receive funds from the Housing Trust Fund, that are affordable to very low-income households, and that require a supplement to rent income to cover ongoing operating expenses;
- rental assistance vouchers for housing units that are affordable to very low-income households, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program; and
- operating costs for emergency shelters and licensed overnight youth shelters.

*Distribution to the Home Security Fund Account*.
Fifty-four percent of the surcharge is distributed to the HSF Account. Up to 10 percent may be used by Commerce for administration of homeless housing programs, including costs to develop a strategic plan, collect and evaluate data, measure and report performance, provide technical assistance to local governments, provide training to entities delivering services, and develop and maintain stakeholder relationships.

At least 90 percent must be used by Commerce for homelessness assistance grant programs. Grantees may use funds in partnership with PSH programs administered by the Office of Apple Health and Homes. Priority for use must be given to purposes intended to house persons who are chronically homeless or to maintain housing for individuals with disabilities and prior experiences of homelessness. Commerce must provide counties with the right of first refusal to receive grant funds, except that funding provided through the Office of Homeless Youth Prevention and Protection Programs is exempt from this requirement.

*Distribution to the Affordable Housing for All Account*.
Thirteen percent of the surcharge is distributed to the AHA Account. Up to 10 percent may be used for program administration and technical assistance. At least 90 percent must be used for:
- grants for building operation and maintenance costs of housing projects, or units within housing projects, that are in the state's Housing Trust Fund portfolio, are affordable to extremely low-income households, and require a supplement to rent income to cover ongoing operating expenses; and
- grants to support building operations, maintenance, and supportive services costs for PSH projects, or units within PSH projects, that have received or will receive funding from the Housing Trust Fund or other public capital funding programs, that are occupied by extremely low-income households, and require a supplement to rent income to cover expenses for ongoing property operations, maintenance, and supportive services.

*Distribution to the Landlord Mitigation Program Account*.
Two percent of the surcharge is distributed to the LMP Account. Commerce may use up to 10 percent for program administration and the development and maintenance of a database necessary to administer the LMP.

*Exemptions from the Surcharge.*
The surcharge does not apply to assignments or substitutions of previously recorded deeds of trust; documents recording a birth, marriage, divorce, or death; any recorded documents otherwise exempted from a recording fee or additional surcharges under state law; marriage licenses issued by the county auditor; or documents recording a federal, state, county, city, or water-sewer district, or wage lien or satisfaction of lien.

<u>Home Security Fund Account</u>.
The requirement for the Office of Financial Management to secure an independent expenditure review of state surcharge funds received and deposited into the account on a biennial basis is removed. The performance-based portion of the funding that Commerce must award to eligible grantees beginning July 1, 2023, for certain project-based vouchers is reduced to 7 percent, instead of 15 percent. The statute exempting certain HSF Account funds from the set aside under the $62 Local Homeless Housing and Assistance Surcharge is repealed.

Transitional Housing Operating and Rent Account.
The Transitional Housing Operating and Rent Account is repealed.

Reporting Requirements.
Commerce is no longer required to include information about the amount of expenditures for private rental housing payments required by the $62 Local Homeless Housing and Assistance surcharge in its annual report on state and local homelessness document-recording fee expenditures by county.

Updated References.
References to the repealed surcharges are replaced with references to the new consolidated $183 housing surcharge throughout the Homeless Housing and Assistance chapter, including in the HSF and AHA accounts, and in the following statutes:
- the statute listing the fees that county auditors are required to collect for their official services;
- the definition section for the Residential Landlord-Tenant Act;
- the property tax exemption for certain property owned or used by a nonprofit entity to provide rental housing or space for placement of a mobile home to qualifying households; and
- the property tax exemption for certain property owned by a limited equity cooperative that provides owned housing for low-income households, which expires January 1, 2033.

Obsolete references to the "Homeless Housing Account" are also replaced in several statutes with references to the "Home Security Fund Account."

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a complicated clean-up bill. Over the years, the Legislature has created several layers of document-recording fees for housing, resulting in a spiderweb or patchwork. The first document-recording fee dedicated to housing was enacted 20 years ago. Since then, a total of four fees have been enacted connected to housing and homelessness. The specifics of each of those fees have been amended many times over the last 20 years, including the amounts, the documents subject to the fees, the allowable uses of funds, and the portion of each fee dedicated to allowable uses and accounts.

These changes over the years have been positive, but the layers of intersecting amendments have created law that is very difficult to interpret.  To decipher it, the law requires complex spreadsheets with complicated formulas and inconsistent exemptions.  The ambiguity increases audit risk.

This bill is designed to make the existing law more transparent and easier for everyone to understand and implement.  This bill will simplify and streamline the administration of the fee without changing the amount of the fee.  This bill does not change the fee charged to record a document and makes no meaningful changes to how the fee is used.  This bill is good housekeeping.

(Opposed) None.

**Persons Testifying:**  Senator June Robinson, prime sponsor; Tedd Kelleher, Department of Commerce; Juliana Roe, Washington State Association of Counties; and Vicky Dalton, Washington State Association of County Auditors.

**Persons Signed In To Testify But Not Testifying:**  None.