

HOUSE BILL REPORT

E2SHB 3180

As Passed House:

February 15, 2008

Title: An act relating to housing reform policies to achieve greater efficiencies in housing investments.

Brief Description: Addressing housing reform policies to achieve greater efficiencies in housing investments.

Sponsors: By House Committee on Capital Budget (originally sponsored by Representatives Ormsby, Green, Morrell, Liias, Dunn and Wood).

Brief History:

Committee Activity:

Housing: 1/30/08, 1/31/08 [DPS];

Capital Budget: 2/6/08, 2/12/08 [DP2S(w/o sub HOUS)].

Floor Activity:

Passed House: 2/15/08, 66-28.

Brief Summary of Engrossed Second Substitute Bill

- Requires the Department of Community, Trade and Economic Development (DCTED) to identify strategies to reduce costs associated with affordable housing projects financed through the Housing Trust Fund.
- Requires the Office of the Insurance Commissioner to recommend strategies to reduce construction liability and earthquake insurance costs for projects funded by the Housing Trust Fund.
- Creates the Float Loan Program within the DCTED to assist organizations with affordable housing projects to continue with their development process while awaiting a full Housing Trust Fund award or securing alternate project funding.
- Adds objectives to the Washington State Housing Finance Commission (HFC) plan and requires the plan to be updated every two years.

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.

- Requires that the HFC give priority to nonprofit organizations when awarding tax exempt multi-family bonds.
- Exempts housing projects funded by the Housing Trust Fund from certain relocation assistance and property acquisition requirements.
- Creates a Nonprofit Equity Account Program within DCTED to facilitate the use of HFC tax exempt multi-family bonds.
- Creates the Housing Communities Program within DCTED to assist nonprofit organizations to develop or expand affordable housing programs.
- Creates the Affordable Housing Infrastructure Account and program.
- Increases the income threshold necessary for residents of nonprofit owned housing to 60 percent of the median family income for the nonprofits funded by the Nonprofit Equity Account Program to qualify for a property tax exemption.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Miloscia, Chair; Springer, Vice Chair; Liias and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Armstrong, Ranking Minority Member; McCune and Schindler.

Staff: Robyn Dupuis (786-7166).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Housing. Signed by 13 members: Representatives Fromhold, Chair; Ormsby, Vice Chair; Schual-Berke, Vice Chair; Appleton, Blake, Dunshee, Eickmeyer, Flannigan, Hasegawa, Kelley, Pedersen, Sells and Upthegrove.

Minority Report: Do not pass. Signed by 8 members: Representatives McDonald, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Chase, Hankins, McCune, Pearson, Skinner and Smith.

Staff: Nona Snell (786-7153).

Background:

Housing Trust Fund

The Department of Community, Trade and Economic Development (DCTED) provides financial assistance to affordable housing projects for low-income persons through its Housing Trust Fund loan and grant program. Eligible activities for Housing Trust Fund assistance include new construction and rehabilitation, rent subsidies, housing related social services, shelters, acquisition of low-income housing units, and down payment assistance.

Housing Development Liability Insurance

Condominium Developments: The Washington Condominium Act (WCA) controls the creation, construction, sale, financing, management, and termination of condominiums. The WCA contains special rules regarding express and implied warranty protection for condominium purchasers. These provisions are unique to condominium construction and do not apply generally to other kinds of construction. Express warranties are assertions that are made by the declarant with respect to a condominium and that are relied upon by a buyer. Implied warranties are statutorily created in the WCA and include warranties of quality that the units and common areas are free from defective materials, built in accordance with sound engineering and construction standards, and built in a workmanlike manner, amongst others. These warranty provisions may be seen as providing extra protection against defective construction for condominium purchasers as compared to purchasers of other buildings. Although a condominium purchaser may have more grounds upon which to sue, however, he or she has a shorter time in which to bring a lawsuit than does the purchaser of a non-condominium building.

Lawsuits under the WCA that are based on an alleged breach of one of the statutory warranties must be brought within four years. This four-year period begins with respect to a condominium unit when the first owner of the unit takes possession. With respect to common elements of the condominium, the four years begins at the later of when the first unit is sold or when the common element is completed or added to the condominium. The four years begins to run at those times regardless of whether an owner knows or reasonably should have known of the defect.

Non-Condominium Construction: In a non-condominium construction defect case, there are no statutory grounds for a lawsuit. Injured claimants rely instead on common law principles of tort and contract. In suits against builders for construction defects in non-condominium cases a six-year "statute of repose" applies to all claims. This period of repose operates in conjunction with various statutes of limitations, and also with the so-called discovery rule in some cases. The six years begin after substantial completion of construction. Depending on the nature of the case and the applicable statute of limitations, a claimant may have more than six years to bring a claim for a defect in a non-condominium construction defect case.

Liability Insurance Costs Related to Housing Development: For a variety of reasons, lenders appear to require additional construction liability insurance for condominium projects, including coverage for construction defects discovered after construction is complete, than for non-condominium projects. Condominium liability insurance has been more expensive than general construction liability insurance.

Housing Finance Commission

The Washington State Housing Finance Commission (HFC) was created by the Legislature in 1983, however it is not a state agency. The HFC does not receive state funds, it does not lend state funds, and the state is not liable for any of the HFC's debt. The HFC acts as a financial conduit of federal funds and has the authority to issue bonds for the development of affordable housing and nonprofit facilities.

The HFC acts as a conduit of federal financing for housing and nonprofit facilities. It issues both tax-exempt and taxable bonds to provide below market-rate financing to nonprofit and for-profit developers who set aside a certain percentage of their units for low-income individuals and families. To date, the HFC has financed more than 126,000 affordable housing units and elderly beds, and provided over 38,000 loans for home ownership. It has also financed 127 nonprofit facilities throughout the state.

Relocation Assistance - Real Property Acquisition Policy

The DCTED received an Attorney General opinion in 1991 which asserts that any agency, which includes government agencies, persons, and nonprofit organizations, who displaces people (which include businesses) with projects funded with state revenues (such as the Housing Trust Fund) is subject to the relocation assistance requirements in Chapter 8.26 RCW. Local public agencies may elect not to comply with the relocation assistance requirements if the displacing project is not receiving federal financial assistance.

Required relocation assistance includes:

- (a) paying for a person's moving and related expenses;
- (b) payment for a property owner's replacement housing up to \$22,500;
- (c) payment for replacement housing for tenants and others up to \$5,250; and
- (d) relocation assistance advisory services.

All projects funded by the Housing Trust Fund (except those of local public agencies which are not also receiving federal monies) have been directed to comply with the relocation assistance requirements of Chapter 8.26 RCW.

Property Tax Exemption for Non-Profits

Nonprofit organizations may receive a property tax exemption for rental housing developments or mobile home spaces when at least 75 percent of units are occupied by households with incomes at or below 50 percent of the adjusted median county income.

Summary of Engrossed Second Substitute Bill:

Strategies to Reduce Costs for Housing Trust Fund (HTF) Projects

The DCTED must work with housing advocates to:

- identify affordable housing development costs;
- propose strategies to reduce these costs for HTF projects;
- recommend potential performance measures; and
- analyze the fiscal impact of public policies on affordable housing development.

The DCTED will report its findings and recommendations to the Legislature by September 30, 2009.

Recommendations to Reduce Certain Insurance Costs for Housing Trust Fund Projects

The Office of the Insurance Commissioner (OIC) must recommend strategies to reduce construction liability and earthquake insurance costs for projects funded by the HTF.

- The OIC will report on recommendations to the Legislature by December 1, 2008.

Housing Trust Fund Float Loan Program and Account

The HTF Float Loan Program provides zero or low interest loans to organizations which apply to the HTF (and are ready to proceed with development) but for which there is not adequate monies within the HTF to fund their project during the current funding round. The DCTED must develop program policies and procedures by December 1, 2008, and implement the program by February 1, 2009.

Washington State Housing Finance Commission (HFC) Policy Objectives and Reporting Requirements

One major objective of the HFC is to increase the supply of affordable and decent housing throughout the state. Within its plan the HFC must consider and set objectives for the use of funds to promote increased housing density. The Commission will update its plan every two years and report annually to the Legislature on plan implementation.

Housing Finance Commission - Priority to NonProfit Organization Applications

The HFC must adopt program guidelines to ensure that qualified applications submitted by nonprofit entities are given priority for the use of tax exempt bonds for multifamily affordable housing developments.

Exemption of Affordable Housing Developments from Chapter 8.26 Relocation Assistance

Projects funded by the Housing Trust Fund are exempt from relocation assistance and property acquisition requirements (and rules) of Chapter 8.26 RCW. The DCTED must create standards and requirements for relocation assistance and property acquisition to which HTF projects must comply.

NonProfit Equity Fund Program and Account

The Nonprofit Equity Fund Account Program is created within the DCTED to facilitate the use of the HFC multifamily tax-exempt bonds by nonprofit organizations. The DCTED will contract with the HFC to administer the Nonprofit Equity Fund Program. The Nonprofit Equity Fund Account (appropriated) is created.

Housing Communities Program

The Housing Communities Program is created within the DCTED to provide technical assistance and capacity building programs to help nonprofit organizations serving communities of color or multilingual communities develop or expand housing programs. The DCTED will contract with experienced housing nonprofits to operate the program throughout the state.

Increasing Income Threshold for NonProfit Property Tax Exemption Program

Nonprofit organizations that receive funds from the Nonprofit Equity Account Program may receive a property tax exemption for rental housing developments or mobile home spaces when at least 75 percent of units are occupied by households with incomes at or below 60 percent of the adjusted median county income.

The Housing Infrastructure Program

The Housing Infrastructure Program is created within the DCTED to provide loans for public infrastructure that supports affordable rental or owner-occupied housing. Loans, with interest rates up to .5 percent, will be competitive and can be made for public works projects that support such housing for activities including the planning, construction, repair, reconstruction, replacement, rehabilitation, or improvements of sidewalks, streets and roads, bridges, power utilities, water systems, storm and sanitary sewage systems, and solid waste facilities.

Loans are also available for the acquisition of real property when the acquisition is directly related to the development of public works projects for affordable housing.

In addition to supporting affordable housing, projects must demonstrate evidence that:

- (a) additional residential or mixed-use development will occur in an urban growth area;
- (b) the development is within one-half mile of a public transit stop; or
- (c) either moderate or high-density housing, or both, will be constructed.

Income limits for rental housing is 80 percent of the median income (or the median income for high-cost areas). Income limits for owner-occupied housing is 115 percent of the median income (150 percent in high-cost areas).

High-cost areas are defined as a county where the third quarter median house price for the previous year, as reported by the Washington Center for Real Estate Research at Washington State University, is equal to or greater than 130 percent of the statewide median house price published during the same period.

An Affordable Housing Infrastructure Account is created and is subject to appropriation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, sections 1, 2, 10, 11 and 12 are null and void if not funded in the budget.

Staff Summary of Public Testimony: (Housing)

(In support) The housing crisis continues to worsen. Affordable housing units are being lost and it is becoming more and more expensive and challenging to develop new units. These policy changes will enable nonprofit developers to increase their capacity and create the greatest number of units to serve the lowest income groups, as well as to fulfill the growing need for workforce housing.

Development Cost Study: It is critical that we attach a cost to the many values and goals of the state. Development costs are escalating and the hope is that this study will result in some innovative strategies to construct housing in a more cost efficient way.

Insurance Study: Earthquake insurance is very expensive. When not required by funders, it is likely that nonprofits will choose not to insure which makes them very vulnerable. Construction liability expense is also a big concern for nonprofit developers. Strategies for more economical and effective insurance coverage would be very helpful.

The HTF Float Loan Program: This program will provide funds to be used for development costs of organizations whose applications are awaiting HTF approval. Since construction costs continue to rise, float loans will help prevent increased overall project costs associated with delays.

Exemption from Relocation Assistance Statute: This has the potential to save nonprofit housing developers hundreds of thousands of dollars. Nonprofits are happy to pay relocation assistance, but requirements need to be reasonable and should not be calculated the same as for projects acquired for highways or by eminent domain.

Housing Communities Program: The current strategies employed by many communities of color, like urban latinos, farm workers, and forest workers, do not address housing. This new program will help these communities help themselves.

Nonprofit Equity Fund: This fund will enable nonprofits to utilize HFC tax exempt bonds without having to secure the multiple funding sources that are typically necessary in order to have enough equity in the project to make the tax exempt bond program a fiscally effective tool. This will enable more nonprofit organizations to serve workforce households earning above 50 percent of the area median income.

Expanded Property Tax Exemption: This additional property tax savings will help nonprofits build more workforce housing.

(Concerns) Insurance Study: The study in the bill will take substantial resources and may not accomplish the goal of decreasing insurance costs. Liability insurance costs are cyclical, the construction liability market is narrow and "hard" and will take time to soften.

HFC Awards First to NonProfits: The preferential treatment given to nonprofits will reduce competition and may actually increase the costs of affordable housing. The HFC should base its evaluation (as it does currently) on the applicant project's public benefit, viability, and the experience and capacity of the developer, not simply on their status of being a nonprofit entity. For profit developers have a place in the affordable housing field and they often bring unique expertise and efficiency. They also bring equity from other sources instead of relying on other public funds. Placing such a finite rule in statute may have unintended consequences. The Nonprofit Equity Fund gives nonprofit developers an advantage and will likely place them at the top of the list for awards anyway.

HFC Policy Changes: It is suggested that the policy regarding maintaining housing as affordable in perpetuity be rephrased to "as long as possible."

(Opposed) Expanded Property Tax Exemption: This expanded exemption will not increase affordability. To access the tax exempt bond program, the nonprofit developers have to serve at or below 60 percent so this exemption will not result in any benefit. Rather, it is likely that nonprofit developers will try to access tax exempt bonds in order to qualify for this exemption and thereby will further deplete the already inadequate quantity of bonds available with no resulting benefit.

HFC Awards First to NonProfits: The preferential treatment given to nonprofits by the HFC will reduce competition and may actually increase the costs of affordable housing. The HFC should base its evaluation (as it does currently) on the applicant project's public benefit, viability, and the experience and capacity of the developer, not simply on their status of being a nonprofit entity.

Staff Summary of Public Testimony: (Capital Budget)

(In support) The housing crisis continues to worsen and affordable housing units are being lost. It is becoming increasingly more expensive and challenging to develop new units. The bill will enable nonprofit developers to increase capacity and create the greatest number of units to serve the lowest income groups, as well as to meet the growing need for workforce housing.

The Housing Trust Fund (HTF) Float Loan Program will provide funds for development costs of organizations whose applications are awaiting HTF approval. Since construction costs continue to rise, the float loans will help prevent increased project costs associated with delays.

The Nonprofit Equity Fund will help nonprofit organizations access the Housing Finance Commission's (HFC) tax-exempt bond program without having to secure several funding sources, typically necessary for adequate equity to make the tax-exempt bond program work for them. The fund will help nonprofit organizations serve workforce households earning above 50 percent of the area median income.

The expanded property tax exemption will allow nonprofits to build more workforce housing.

(With concerns) If the HFC gives preferential treatment to nonprofits, the reduced competition from for-profit developers may increase the costs of affordable housing. The HFC should base its evaluation on a project's public benefit, viability, and the experience and capacity of the developer, not only the tax status of the developer. For-profit developers often bring expertise and efficiency to the development of affordable housing and have access to equity from other sources and do not rely on other public funds. Placing the rules in statute may have unintended consequences.

The expanded property tax exemption will not increase affordability. To access the tax-exempt bond program; nonprofit developers have to serve at or below 60 percent of the area

median income, so the exemption will not result in additional housing. It is likely that nonprofit developers may attempt to access tax-exempt bonds in order to qualify for this exemption and may further deplete the already short supply of bonds available with no resulting benefit.

(Opposed) None.

Persons Testifying: (Housing) (In support) Representative Ormsby, prime sponsor; Paul Purcell, Beacon Development Group; Kathy Roseth, Plymouth Housing Group; and Michael Reichert, Catholic Community Services.

(Concerns) Timothy Harris, Building Industry Association of Washington; Kim Herman, Housing Finance Commission; Scott Catton, Piper Jaffray and Company; Chris Carlson, Office of the Insurance Commissioner; Nick Federici, Washington Low-Income Housing Alliance; and Jeanette McKenzie, Washington Realtors.

(Opposed) Stephen Whyte, Pacific Housing Advisors; and Fred Eoff, D. A. Davidson.

Persons Testifying: (Capital Budget) (In support) Michael Fuller, Association Against Homelessness in America.

(With concerns) Ben Gitenstein and Nick Federici, Washington Low-Income Housing Alliance; Kathy Roseth, Plymouth Housing; Greg Dunfield, Washington Affordable Housing Development Coalition; and Kim Herman, Washington State Housing Finance Commission.

Persons Signed In To Testify But Not Testifying: (Housing) None.

Persons Signed In To Testify But Not Testifying: (Capital Budget) None.