

# SENATE BILL REPORT

## SB 5386

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As of February 20, 2023

**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:** Senators Robinson, Kuderer, Saldaña and Wilson, C.; by request of Department of Commerce.

**Brief History:**

**Committee Activity:** Housing: 1/27/23, 2/10/23 [DPS-WM, w/oRec].  
Ways & Means: 2/20/23.

**Brief Summary of First Substitute Bill**

- Updates the distribution and uses for the homeless housing assistance surcharges.
- Uniformly exempts certain documents from housing related surcharges.
- Removes the Transitional Housing Operating and Rent Account.
- Eliminates 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, and 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.

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### SENATE COMMITTEE ON HOUSING

**Majority Report:** That Substitute Senate Bill No. 5386 be substituted therefor, and the

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*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.*

substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Fortunato, Ranking Member; Cleveland, Gildon, Saldaña, Shewmake and Trudeau.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun and Wilson, J..

**Staff:** Melissa Van Gorkom (786-7491)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Trevor Press (786-7446)

**Background:** Homeless Housing and Assistance Surcharges. The state and local homeless housing programs receive funding from the homeless housing and assistance surcharges collected by each county auditor when certain documents are recorded. The following surcharges related to affordable housing and homeless services are collected by the county, with shares of the funds distributed to the county and to the state:

- \$100 recorded document surcharge;
- \$13 Affordable Housing for All surcharge;
- \$62 Local Homeless Housing and Assistance surcharge; and
- \$8 additional Local Homeless Housing and Assistance surcharge.

*Recorded Document Surcharge.* Of the \$100 surcharge, 20 percent is distributed into the Affordable Housing for All Account to provide permanent supportive housing (PSH) operations, maintenance, and service costs. Until June 30, 2024, 4 percent is distributed into the Landlord Mitigation Program Account (LMP) and 76 percent is distributed into the Home Security Fund Account (HSF). After June 30, 2023, 2 percent is distributed into the LMP and 78 percent is distributed into the HSF. No less than 60 percent of the funds deposited into the HSF are to be used for project-based vouchers for nonprofit housing providers and public housing authorities, housing services, rapid rehousing, emergency housing, acquisition, operations, maintenance, service costs for PSH for persons with disabilities, PSH administered by Apple Health and Homes, certain rental assistance, foreclosure prevention services, dispute resolution center eviction prevention services, and tenant education and legal assistance.

*Affordable Housing for All Surcharge.* Of the \$13 surcharge, approximately 60 percent is retained by the county for local affordable housing and assistance, and approximately 40 percent is distributed to the state. The state's share of \$10 of the fee is deposited into the Affordable Housing for All Account, to be used by the Department of Commerce (Commerce) for housing and shelter for extremely low-income households. The state's share of \$3 of the fee is deposited into the LMP to provide financial support to landlords of tenants who receive rental assistance.

*Local Homeless Housing and Assistance Surcharge.* Of the \$62 surcharge, approximately 67 percent is retained by the county for local homeless housing and assistance. The remainder is distributed to the state for deposit in the HSF, and is used by Commerce to manage the State Homeless Housing Program. Commerce may use 12.5 percent to administer the 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.

*Additional Local Homeless Housing and Assistance Surcharge.* Of the \$8 surcharge, approximately 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. Any remaining funds distributed to the state may be used by Commerce to provide housing and shelter for homeless people, and fund the state's homeless housing grant program.

The homeless housing assistance surcharges 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. The recorded document, and local homeless housing and assistance 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 state, county, or city lien.

Home Security Fund Account. The HSF is an appropriated account, and may be used only for homeless housing programs. Starting on July 1, 2023, 15 percent of funds for project-based vouchers for nonprofit housing providers or public housing authorities and related services, emergency housing, rapid rehousing, and housing acquisition are tied to performance-based metrics which are created and enforced by Commerce. Counties who fail to meet or exceed the majority of targets specified by Commerce for two consecutive years must enter into a corrective action plan and may be subject to fund reductions. Commerce is allowed to reallocate unspent funds from counties that fail to meet 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 1st of each even-numbered year.

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

Landlord Mitigation Program Account. The LMP is a non-appropriated account administered by Commerce to reimburse landlords for eligible claims related to private market rental units during the time of their rental to low-income subsidy programs under the LMP.

Transitional Housing Operating and Rent Account. The Transitional Housing Operating and Rent Account is a non-appropriated account administered by Commerce 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.

Data and Reporting Requirements. Commerce must develop a consistent statewide data gathering instrument to monitor the performance of cities and counties receiving grants in order to determine compliance with the terms and conditions set forth in the grant application. By December 1st of each year, Commerce must provide an update on the state homeless housing five-year strategic plan and its activities for the prior fiscal year. The update must be posted on Commerce's website and include a report on state and local homelessness document recording fee expenditure by county, including the total amount of fee spending, percentage of total spending from fees, number of people served by major assistance type, and amount of expenditures for private rental housing payments.

**Summary of Bill (First Substitute):** Homeless Housing and Assistance Surcharges. The surcharges are combined to create one \$183 surcharge related to affordable housing and homeless services. Of the \$183 surcharge, 31 percent is retained by the county and the remainder is distributed to the state Affordable Housing for All Account, LMP and HSF.

*Affordable Housing for All Account.* Thirteen percent of the surcharge is distributed to the Affordable Housing for All 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 operations and maintenance costs of housing projects, or units with housing projects 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 housing projects, that have received public capital funding.

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

*Home Security Fund Account.* Fifty-four percent of the surcharge is distributed to the HSF account. Up to 10 percent may be used for administration of homeless housing program including cost to develop a strategic plan, collecting and evaluating data, measure and report performance, provide technical assistance to local governments, provide training to

entities delivering services, and developing and maintaining stakeholder relationships. At least 90 percent for homelessness assistance grant programs, and allows grantees to use funds in partnership with PSH programs administered by the Office of Apple Health and Homes. Starting on July 1, 2023, 7 percent of funds for homeless assistance grant programs are tied to performance-based metrics which are created and enforced by Commerce. 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.

*County Distribution.* One percent of the surcharge is retained by the county auditor for its fee collection activities. The remaining 30 percent retained by the county must be used as follows:

- up to 10 percent for administration and local distribution of funds and administrative costs related to the county's homeless housing plan;
- at least 75 percent to accomplish the purposes of its local homeless housing plan under the homelessness housing and assistance act; and
- at least 15 percent for:
  1. acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households;
  2. supporting building operation and maintenance costs of housing projects or units eligible to receive housing trust funds, that are affordable to very low-income households, and that require a supplement to rent income to cover ongoing operating expenses;
  3. rental assistance vouchers for housing units that are affordable to very low-income households;
  4. operating costs for emergency shelters and licensed overnight youth shelters.

The surcharge must be charged by the county auditor for each document recorded with the following exceptions:

- 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; and
- documents recording a federal, state, county, city, or water-sewer district, or wage lien or satisfaction of lien.

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

Reporting Requirements. The requirement 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 is removed.

**EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):**

- Amends cross references to statutes that are repealed under the bill.
- Updates the distribution of the fees deposited into the HSF account to remove the requirement that at least 30 percent be used for permanent supportive housing programs administered by the Office of Apple Health and Homes and increases the percent used for homelessness assistance grants administered by Commerce to be at least 90 percent, instead of 60.
- Updates the types of programs that are eligible under the homelessness assistance grant program.
- Allows homeless assistance grantees to use funds in partnership with permanent supportive housing programs administered by the Office of Apple Health and Homes.
- Requires Commerce award funds to eligible grantees in a manner that 7, rather than 15, percent of funding distributed as performance-based allocation based on performance metrics.
- Removes requirement for Commerce to include amount of expenditures for private rental housing payments in its report of state and local homelessness document recording fee expenditures by county.
- Expands allowable uses under the affordable housing for all accounts.

**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 on Original Bill (Housing):** *The committee recommended a different version of the bill than what was heard.* PRO: I am aware of the spider web of complexity with these fees and want to clean up this mess. It is challenging to unwind these accounts and determine where spending is going. During the past two decades the amendments to these surcharges has resulted in complicated formulas that are convoluted and inconsistent exemptions that are difficult to administer. This is a cleanup bill that doesn't increase charges, it consolidates four fees to make it easier to understand. Appreciate the collaboration to ensure that there are no changes to the policy, streamlining these fees will reduce complexity, increase transparency and make it easier to implement. There is a housekeeping change needed to reflect the RCWs that are being repealed by this bill.

OTHER: Support the effort to simplify the fees but are concerned that the bill reduces funding eligible for permanent supportive housing which is the best tool for addressing unsheltered homelessness. The bill appears to be rounding down the existing funding from 13.11 percent to 13 percent in the affordable housing for all account which may diminish

existing resources that exist to provide services and we would like an amendment to ensure that this funding is preserved.

**Persons Testifying (Housing):** PRO: Senator June Robinson, Prime Sponsor; Juliana Roe, Washington State Association of Counties; Vicky Dalton, Spokane County Auditor - Washington State Association of County Auditors; Tedd Kelleher, Department of Commerce.

OTHER: Kelly Rider, King County; Lauren Fay, DESC.

**Persons Signed In To Testify But Not Testifying (Housing):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This is a cleanup bill that combines multiple fees into one, but it makes no meaningful changes to how the fee is used. This will bring clarity to the administrative process.

**Persons Testifying (Ways & Means):** PRO: Tedd Kelleher, Department of Commerce; Vicky Dalton, Washington State Assoc of County Auditors.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.