Chapter 43.185A RCW
AFFORDABLE HOUSING PROGRAM

Sections

43.185A.005 Findings.
43.185A.010 Definitions.
43.185A.020 Affordable housing program—Purpose—Input.
43.185A.040 Eligible organizations.
43.185A.060 Protection of state interest.
43.185A.070 Monitor recipient activities.
43.185A.130 Washington housing trust fund.
43.185A.140 Use of moneys for loans and grant projects to provide affordable housing—Eligible activities.
43.185A.150 Notice of grant and loan application period—Priorities—Criteria for evaluation.
43.185A.160 Remittances from real estate broker trust account interest—Grant and loan applications.
43.185A.170 Preconstruction technical assistance.
43.185A.180 Grants and loans for major building improvements, preservation repairs, and system replacements.
43.185A.190 Reports—Cost data.
43.185A.902 Conflict with federal requirements—1991 c 356.

RCW 43.185A.005 Findings. The legislature finds that current economic conditions, federal housing policies and declining resources at the federal, state, and local level adversely affect the ability of low and very low-income persons to obtain safe, decent, and affordable housing.

The legislature further finds that members of over 150,000 households pay more than 50 percent of their income for rent and housing costs.

The legislature further finds that minorities, rural households, and migrant farmworkers require housing assistance at a rate which significantly exceeds their proportion of the general population.

The legislature further finds that one of the most dramatic housing needs is that of persons needing special housing-related services, such as individuals with mental illness, recovering alcoholics, frail elderly persons, families with members who have disabilities, and single parents. These services include medical assistance, counseling, chore services, and child care.

The legislature further finds that state investments in affordable housing, as enabled by the legislature in 1986, have exceeded $1,800,000,000 to provide over 55,000 units of safe and affordable housing to low-income individuals. [2023 c 275 s 1; 1991 c 356 s 1; 1986 c 298 s 1. Formerly RCW 43.185.010.]

RCW 43.185A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the

household's income. The department must adopt policies for residential homeownership housing, occupied by low-income households, which specify the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, to qualify as affordable housing.

(2) "Contracted amount" means the aggregate amount of all state funding for which the department has monitoring and compliance responsibility.

(3) "Department" means the department of commerce.

(4) "Director" means the director of the department of commerce.

(5) "First-time homebuyer" means:

(a) An individual or the individual's spouse who has had no ownership in a principal residence during the three-year period ending on the date of purchase of the property;

(b) A single parent who has only owned a home with a former spouse while married;

(c) An individual who is a displaced homemaker as defined in 24 C.F.R. Sec. 93.2 as it exists on July 23, 2023, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and has only owned a home with a spouse;

(d) An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; or

(e) An individual who has only owned a property that is determined by a licensed building inspector as being uninhabitable.

(6) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located. [2023 c 275 s 7; 2013 c 145 s 4; 2009 c 565 s 38; 2008 c 6 s 301; 2000 c 255 s 9; 1995 c 399 s 102; 1991 c 356 s 10.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective date—2000 c 255: See RCW 59.28.902.

RCW 43.185A.020 Affordable housing program—Purpose—Input. The affordable housing program is created in the department for the purpose of developing and preserving affordable housing and coordinating public and private resources targeted to meet the affordable housing needs of low-income households in the state of Washington. The program shall be developed and administered by the department with advice and input from the affordable housing advisory board established in RCW 43.185B.020. [2023 c 275 s 8; 1995 c 399 s 103; 1993 c 478 s 16; 1991 c 356 s 11.]

RCW 43.185A.040 Eligible organizations. Organizations that may receive assistance from the department under this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations.

Eligibility for assistance from the department under this chapter also requires compliance with the revenue and taxation laws, as applicable to the recipient, at the time the grant is made. [1994 c 160 s 4; 1991 c 356 s 13.]

RCW 43.185A.060 Protection of state interest. The department shall adopt policies to ensure that the state's interest will be protected upon either the sale or change of use of projects financed in whole or in part under RCW 43.185A.140(4). These policies may include, but are not limited to: (1) Requiring payment to the state of a share of the appreciation in the project in proportion to the state's contribution to the project; (2) requiring a lump-sum repayment of the loan or grant upon the sale or change of use of the project; or (3) requiring a deferred payment of principal or principal and interest on loans after a specified time period. The policies must require projects to remain as affordable housing for a minimum of 40 years except for projects that provide homes for low-income first-time homebuyers, which must remain affordable for a minimum of 25 years. [2023 c 275 s 9; 1991 c 356 s 15.]

RCW 43.185A.070 Monitor recipient activities. (1) To the extent funds are appropriated for this purpose, the director shall monitor the activities of recipients of grants and loans under this chapter to determine compliance with the terms and conditions set forth in its application or stated by the department in connection with the grant or loan.

(2) Personally identifiable information of occupants or prospective tenants of affordable housing or the street address of the residential real property occupied or applied for by tenants or prospective tenants of affordable housing, obtained by the department of commerce during monitoring activities or contract administration are exempt from inspection and copying under RCW 42.56.395. [2023 c 275 s 10; 1991 c 356 s 16.]

RCW 43.185A.130 Washington housing trust fund. There is hereby created in the state treasury an account to be known as the Washington housing trust fund. The housing trust fund shall include revenue from the sources established by this chapter, appropriations by the legislature, private contributions, repayment of loans, and all other sources. [2023 c 275 s 2; 2016 sp.s. c 36 s 936; 1991 sp.s. c 13 s 87; 1991 c 356 s 3; 1987 c 513 s 6; 1986 c 298 s 2. Formerly RCW 43.185.030.]

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—1991 sp.s. c 13: See note following RCW 18.04.105.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.285.

Distribution of interest from real estate brokers' trust accounts: RCW 18.85.285.

RCW 43.185A.140 Use of moneys for loans and grant projects to provide affordable housing—Eligible activities. (1) The department must use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loan or grant projects that will provide affordable housing for persons and families with special housing needs and who are low-income households.

(2) At least thirty percent of these moneys used in any given funding cycle must be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(3) The department must prioritize allocating at least, but not limited to, 10 percent of these moneys used in any given funding cycle to organizations that serve and are substantially governed by individuals disproportionately impacted by homelessness, including black, indigenous, and other people of color and, lesbian, gay, bisexual, queer, transgender, and other gender-diverse individuals.

(4) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Preconstruction technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(c) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(d) Shelters for the homeless, including emergency shelters and overnight youth shelters;

(e) Down payment or closing costs assistance for low-income first-time homebuyers;

(f) Acquisition of housing units for the purpose of preservation as low-income housing;

(g) Projects making affordable housing projects more accessible to low-income households with members who have disabilities; and

(h) Remodeling and improvements as required to meet building code, licensing requirements, or legal operations to residential properties owned and operated by an entity eligible under RCW 43.185A.040, which were transferred as described in RCW 82.45.010(3)(t) by the parent of a child with developmental disabilities.

(5)(a) Legislative appropriations from capital bond proceeds may be used for the costs of projects authorized under subsection (4) of this section, except for costs of subsection (4)(c) of this section.

(b) The department may use up to three percent of the appropriations from capital bond proceeds or other new appropriations for affordable housing investments for administrative costs associated

with application, distribution, and project development activities of the affordable housing program.

(c) Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(6)(a) Moneys received from repayment of housing trust fund loans or other affordable housing appropriations may be used for all activities necessary for the proper functioning of the affordable housing program, including, but not limited to, providing preservation funding, as provided in RCW 43.185A.180, and preconstruction technical assistance as provided in RCW 43.185A.170.

(b) Administrative costs associated with compliance and monitoring activities of the department may not exceed four-tenths of one percent annually of the contracted amount of state investment in affordable housing programs. [2023 c 275 s 3. Prior: 2021 c 332 s 7032; 2021 c 130 s 5; 2018 c 223 s 4; 2017 3rd sp.s. c 12 s 13; 2013 c 145 s 2; 2011 1st sp.s. c 50 s 953; 2006 c 371 s 236; prior: 2005 c 518 s 1801; 2005 c 219 s 1; 2002 c 294 s 6; 1994 c 160 s 1; 1991 c 356 s 4; 1986 c 298 s 6. Formerly RCW 43.185.050.]

Effective date—2021 c 332: See note following RCW 43.19.501.

Findings—2018 c 223: See note following RCW 82.45.010.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2006 c 371: See note following RCW 27.34.330.

Effective date—2005 c 518: See note following RCW 28A.600.110.

Findings—2002 c 294: See note following RCW 36.18.010.

RCW 43.185A.150 Notice of grant and loan application period—Priorities—Criteria for evaluation. (1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the affordable housing program, the department must announce to all known interested parties, and on its website, a grant and loan application period of at least 60 days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185A.140.

(2) In awarding funds under this chapter, the department must:

(a) Provide for a geographic distribution on a statewide basis; and

(b) Consider the total cost and per-unit cost of each project for which an application is submitted for funding, as compared to similar housing projects constructed or renovated within the same geographic area.

(3) All projects and activities must be evaluated by some or all of the criteria under subsection (6) of this section, and similar projects and activities shall be evaluated under the same criteria.

(4) The department must use a separate application form for applications to provide homeownership opportunities and evaluate homeownership project applications as allowed under chapter 43.185A RCW.

(5) The department must collaborate with public entities that finance affordable housing, including the housing finance commission, cities, and counties, in conducting joint application reviews and coordinate funding decisions in a timely manner.

(6) The department must give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities must be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 40 years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which fulfill statutory mandates to develop community housing;

(k) Project location and access to employment centers in the region or area;

(l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020;

(m) Project location and access to available public transportation services;

(n) Projects involving collaborative partnerships between local school districts and either public housing authorities or nonprofit housing providers, that help children of low-income families succeed in school. To receive this preference, the local school district must provide an opportunity for community members to offer input on the proposed project at the first scheduled school board meeting following submission of the grant application to the department;

(o) The degree of funding that has already been committed to the project by nonstate entities;

(p) Projects that demonstrate a strong readiness to proceed to construction; and

(q) Projects that include a licensed early learning facility.

(7) Once the department has determined the prioritization of applications, the department must award funding projects at a

sufficient level to complete the financing package necessary for an applicant to move forward with the affordable housing project.

(8) The department may not establish a maximum per-applicant award. [2023 c 275 s 4; 2019 c 325 s 5013; 2015 c 155 s 2; (2015 c 155 s 1 expired April 1, 2016); 2014 c 225 s 62; 2013 c 145 s 3; 2012 c 235 s 1. Prior: 2005 c 518 s 1802; 2005 c 219 s 2; 1994 sp.s. c 3 s 9; prior: 1991 c 356 s 5; 1991 c 295 s 2; 1988 c 286 s 1; 1986 c 298 s 8. Formerly RCW 43.185.070.]

Effective date—2019 c 325: See note following RCW 71.24.011.

Effective date—2015 c 155 s 2: "Section 2 of this act takes effect April 1, 2016." [2015 c 155 s 4.]

Expiration date—2015 c 155 s 1: "Section 1 of this act expires April 1, 2016." [2015 c 155 s 3.]

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective date—2005 c 518: See note following RCW 28A.600.110.

RCW 43.185A.160 Remittances from real estate broker trust account interest—Grant and loan applications. The director shall designate grant and loan applications for approval and for funding under the revenue from remittances made pursuant to RCW 18.85.285. [2023 c 275 s 5; 1987 c 513 s 11. Formerly RCW 43.185.074, 18.85.505.]

Effective date—Severability—1987 c 513: See notes following RCW 18.85.285.

RCW 43.185A.170 Preconstruction technical assistance. (1) The department may use moneys from the housing trust fund and other legislative appropriations, to provide preconstruction technical assistance to eligible recipients seeking to construct, rehabilitate, or finance housing-related services for very low and low-income persons. The department shall emphasize providing preconstruction technical assistance services to rural areas and small cities and towns, to nonprofits serving marginalized communities without a history of receiving housing trust fund or other affordable housing investments, and to other nonprofit community organizations led by and for black, indigenous, and persons of color. The department may contract with private and nonprofit organizations to provide this technical assistance. The department may contract for any of the following services:

(a) Financial planning and packaging for housing projects, including alternative ownership programs, such as limited equity partnerships and syndications;

(b) Project design, architectural planning, and siting;

(c) Compliance with planning requirements;

(d) Securing matching resources for project development;

(e) Maximizing local government contributions to project development in the form of land donations, infrastructure improvements, waivers of development fees, locally and state-managed funds, zoning variances, or creative local planning;

(f) Coordination with local planning, economic development, and environmental, social service, and recreational activities;

(g) Construction and materials management; and

(h) Project maintenance and management.

(2) The department shall publish requests for proposals which specify contract performance standards, award criteria, and contractor requirements. In evaluating proposals, the department shall consider the ability of the contractor to provide technical assistance to low and very low-income persons and to persons with special housing needs. [2023 c 275 s 6; 1991 c 356 s 6; 1986 c 298 s 9. Formerly RCW 43.185.080.]

RCW 43.185A.180 Grants and loans for major building improvements, preservation repairs, and system replacements. (1) In order to maintain the long-term viability of affordable housing, using funding from the housing trust fund account established under RCW 43.185A.130 or from other legislative appropriations, the department may make competitive grant or loan awards to projects in need of major building improvements, preservation repairs, or system replacements.

(2) The department must solicit and review applications and evaluate projects based on the following criteria:

(a) The age of the property, with priority given to buildings that are more than 15 years old;

(b) The population served, with priority given to projects serving persons or families with the lowest incomes;

(c) The degree to which the applicant demonstrates that the improvements will result in a reduction of operating or utility costs, or both;

(d) The potential for additional years added to the affordability commitment period of the property; and

(e) Other criteria that the department considers necessary to achieve the purpose of the housing trust fund program.

(3) The department must require an award recipient to submit a property capital needs assessment, in a form acceptable to the department, prior to contract execution. [2023 c 275 s 12.]

RCW 43.185A.190 Reports—Cost data. (1) The department must report on its website on an annual basis, for each funding cycle:

(a) The number of homeownership and multifamily rental projects funded;

(b) The percentage of funding allocated to homeownership and multifamily rental projects; and

(c) For both homeownership and multifamily rental projects, the total number of households being served at up to 80 percent of the area median income, up to 50 percent of the area median income, and up to 30 percent of the area median income.

(2) All housing trust fund loan or grant recipients, except for those receiving preservation awards under RCW 43.185A.180, must provide certified final development cost reports to the department in a form acceptable to the department. The department must use the certified final development cost reports data as part of its cost containment policy and to report to the legislature. Beginning December 1, 2023, and continuing every odd-numbered year, the department must provide the appropriate committees of the legislature

with a report of its final cost data for each project funded through the housing trust fund. Such cost data must, at a minimum, include:

(a) Total development cost per unit for each project completed within the past two complete fiscal years; and

(b) Descriptive statistics such as average and median per unit costs, regional cost variation, and other costs that the department deems necessary to improve cost controls and enhance understanding of development costs.

(3) The department must coordinate with the housing finance commission to identify relevant development costs data and ensure that the measures are consistent across relevant agencies. [2023 c 275 s 13.]

RCW 43.185A.902 Conflict with federal requirements—1991 c 356. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1991 c 356 s 19.]