

State of Wisconsin



2023 Assembly Bill 264

Date of enactment: **June 22, 2023**

Date of publication*: **June 23, 2023**

2023 WISCONSIN ACT 14

AN ACT *to create* 234.66 of the statutes; **relating to:** residential housing infrastructure revolving loan fund and revolving loan program.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 234.66 of the statutes is created to read:

234.66 Residential housing infrastructure revolving loan fund and program. (1) **DEFINITIONS.** In this section:

(a) "Area median income" means the area median family income in the county in which the housing is located, adjusted for family size, as published annually by the federal department of housing and urban development.

(b) "Developer" means a person other than a governmental unit that constructs or creates residential housing.

(c) "Eligible governmental unit" means the governmental unit having jurisdiction of an eligible project, as determined by the authority.

(d) "Eligible project" means a project for housing infrastructure for workforce housing or senior housing.

(dd) "Governmental unit" means a city, village, town, or county or federally recognized American Indian tribe or band in this state.

(e) "Housing infrastructure" means that portion of the installation, replacement, upgrade, or improvement of public infrastructure, or private infrastructure in rural areas if transferred to public use, as determined by the authority, that relates to an eligible project.

(f) "Public infrastructure" means any of the following that is or will be owned, maintained, or provided to or by a governmental unit:

1. A water distribution system.
2. A water treatment plant.
3. A wastewater treatment plant.
4. A sanitary sewer system.
5. A storm sewer system.
6. A stormwater retention pond.
7. A lift or pump station.
8. A street, road, alley, or bridge.
9. A curb, gutter, or sidewalk.
10. A traffic device.
11. A street light.
12. An electric or gas distribution line.

(g) "Residential housing" means new single-family or multifamily housing for rent or sale that satisfies all of the following:

1. Is subject to taxation under ch. 70.
2. Has not been the subject of a claim for a state or federal historic rehabilitation tax credit, as determined by the authority.
3. Has not received financial assistance from tax increments generated by an active tax incremental district.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(h) “Senior housing” means residential housing that satisfies par. (i) 1. to 4. and that is intended and operated primarily for occupancy by at least one person 55 years of age or older per dwelling unit, as determined by the authority.

(i) “Workforce housing” means residential housing that satisfies all of the following, as determined by the authority:

1. For housing intended to be rented, the estimated annual housing costs, as defined under s. 16.301 (3), do not exceed, or are not expected to exceed, 30 percent of 100 percent of the area median income, with family size determined using the federal imputed income limitation, as defined in 26 USC 42 (g) (2) (C), and the utility-related costs if not included in the rent equal the utility allowance determined by the federal department of housing and urban development.

2. For housing intended to be occupied by the owner, the estimated annual housing costs, as defined under s. 16.301 (3), do not exceed, or are not expected to exceed, 30 percent of 140 percent of the area median income, with family size determined using the federal imputed income limitation, as defined in 26 USC 42 (g) (2) (C).

3. For housing intended to be rented, the housing is for occupancy by individuals whose annual household income does not exceed 100 percent of the area median income.

4. For housing intended to be occupied by the owner, the housing is for purchase by individuals whose annual household income is not more than 140 percent of the area median income.

(2) ESTABLISHMENT OF FUND. (a) There is established under the jurisdiction and control of the authority a residential housing infrastructure revolving loan fund, for the purpose of providing loans under sub. (3). The authority may use moneys in the fund to cover actual and necessary expenses incurred to accomplish the purposes of this section, including marketing expenses under sub. (6), and administer the fund. The fund shall consist of all of the following:

1. All moneys appropriated to the authority for the fund.

2. All moneys received from the repayment of loans under sub. (3).

(am) In its discretion, the authority may invest fund moneys that are not required for immediate use or disbursement in all of the following to the extent lawful for fiduciaries in this state:

1. An obligation of the United States or one of its agencies or instrumentalities, or an obligation the principal and interest of which are guaranteed by the United States or one of its agencies or instrumentalities.

2. An obligation of any state, or of any county, city, or other political subdivision of a state, having long-term ratings in the AA category or higher.

3. A certificate of deposit.

4. The state investment fund.

5. A money market mutual fund restricted to one or more investments as provided in subd. 1., 2., 3., or 4.

(an) All investments under par. (am) shall be the exclusive property of the fund. All earnings on or income from such investments shall be credited to the fund.

(b) Of the amounts deposited in the fund under par. (a) 1. in the 2023–25 fiscal biennium, the authority shall return to the secretary of administration for deposit in the general fund all such amounts not encumbered or expended for an eligible project as of the first day of the 8th year beginning after the effective date of this paragraph [LRB inserts date].

(c) No moneys in the fund may be invested under s. 234.03 (18).

(3) ESTABLISHMENT OF REVOLVING LOAN PROGRAM. The authority shall establish and administer a residential housing infrastructure revolving loan program for the purpose of awarding loans under this section.

(4) LOANS TO RESIDENTIAL HOUSING DEVELOPERS. (a) From the residential housing infrastructure revolving loan fund, the authority may award loans to developers to cover housing infrastructure costs for an eligible project. Any developer may apply to the authority for a loan under this subsection in accordance with the application process established by the authority under par. (b), but the authority may not award the loan unless the developer and the eligible governmental unit demonstrate to the satisfaction of the authority in one or more forms prescribed by the authority that all of the following apply:

1. The developer has secured the necessary financial resources for the total cost of development of the residential housing supported by the eligible project.

2. The developer has secured all applicable federal, state, and local government permits or other approvals for the eligible project and the residential housing supported by the eligible project.

4. Any applicable sewer or water service area plan has been amended if necessary.

5. The eligible governmental unit has reduced the cost of residential housing in connection with the eligible project by voluntarily revising zoning ordinances, subdivision regulations, or other land development regulations to increase development density, expedite approvals, reduce impact, water connection, and inspection fees, or reduce parking, building, or other development costs with respect to the development of residential housing supported by the project. For purposes of this subdivision, the governmental unit in cooperation with the developer shall submit to the authority a cost reduction analysis in a form prescribed by the authority and signed by the developer and the head of the governmental unit’s governing body that shows the cost reduction measures, including time saving measures, undertaken by the governmental unit on or after January 1, 2023, that have reduced the cost of residential housing in connection with

the eligible project. The signed analysis shall clearly show for each time saving or cost reduction measure the estimated time or dollar amount saved by the developer and the estimated percentage reduction in housing costs.

6. The eligible governmental unit is in compliance with the requirements under ss. 66.1001, 66.10013, and 66.10014, to the extent those requirements apply to the governmental unit.

7. If applicable, the eligible governmental unit has updated the housing element of its comprehensive plan under s. 66.1001 (2) (b) within the 5 years immediately preceding the date of the loan application.

(b) The authority shall establish and provide a semi-annual application process, including underwriting guidelines, for the award of loans under this subsection. If in any application cycle there are insufficient moneys available in the residential housing infrastructure revolving loan fund to fund all applications that meet the requirements under par. (a) and are otherwise acceptable to the authority, the authority shall prioritize funding loans for eligible projects in eligible governmental units that have reduced the cost of residential housing as described in par. (a) 5. but with respect to the governmental unit as a whole.

(c) 1. The authority may establish an interest rate for any loan awarded under this subsection at or below the market interest rate or may charge no interest.

2. No loan awarded under this subsection may exceed 20 percent of the total cost of development, including land purchase, of the residential housing supported by the eligible project.

(d) The authority shall set aside 25 percent of all moneys deposited in the fund under sub. (2) (a) 1. in the 2023–25 fiscal biennium for a period of not less than 4 years following the effective date of this paragraph [LRB inserts date], for loans awarded under this subsection and sub. (5) for eligible projects supporting senior housing. For purposes of this paragraph, if a loan supports both workforce housing and senior housing, the amount of such loan supporting senior housing shall be calculated by prorating the loan amount between the 2 uses based on the number of residential housing units supported by the loan.

(e) The authority shall set aside 30 percent of all moneys deposited in the fund under sub. (2) (a) 1. in the 2023–25 fiscal biennium, including 30 percent of all moneys set aside under par. (d), for a period of not less than 4 years following the effective date of this paragraph [LRB inserts date], for loans awarded under this subsection and sub. (5) for eligible projects in cities, villages, and towns with a population of 10,000 or less. For purposes of this paragraph, if a single loan supports eligible projects for more than one city, village, or town, the amount of such loan attributable to any one city, village, or town shall be calculated by prorating the loan amount

between the cities, villages, and towns based on the number of residential housing units supported by the loan.

(f) The authority shall divide the state into regions based on the service jurisdiction as of the effective date of this paragraph [LRB inserts date], of each regional planning commission constituted under s. 66.0309, with the counties not served by a regional planning commission as of that date constituting collectively one region. Of all moneys deposited in the fund under sub. (2) (a) 1. in the 2023–25 fiscal biennium, no region may receive more than 25 percent in loans awarded under this subsection and sub. (5) in any given application cycle.

(g) 1. The authority and each developer receiving a loan under this subsection shall enter into an agreement establishing the term and other conditions of the loan. The agreement shall include, and give the authority the power to enforce, all of the following requirements:

a. That the full amount of the loan shall become due upon the developer's sale or transfer of all residential housing constructed in connection with the loan.

b. That all residential housing constructed in connection with the loan shall remain workforce housing or senior housing, as applicable, for a period commencing on the date of the loan and concluding 10 years following initial occupancy of the residential housing constructed in connection with the loan. This restriction shall be recorded against the residential property with the applicable register of deeds and shall run with the land.

c. With respect to each loan under this subsection for workforce housing or senior housing intended for rent, that the owner of the rental housing, for a period commencing on the date of the loan and concluding 10 years following initial occupancy of all of the rental units constructed in connection with the loan, shall annually submit to the authority a certified rent roll for the housing that sets forth for each rental unit the monthly rent required under the lease, the actual monthly rent received for the preceding year, and an identification of the utilities and their amounts included in the rent. This restriction shall be recorded against the residential property with the applicable register of deeds and shall run with the land. The authority shall use the information provided under this subd. 1. c. to confirm that the rental housing continues to meet the housing costs limitation for purposes of sub. (1) (h) and (i) 1. The authority shall calculate the applicable monthly limitation on housing costs for each year by dividing the area median income for the year by 12, with family size determined using the federal imputed income limitation, as defined in 26 USC 42 (g) (2) (C). If in any year the area median income has decreased compared to the prior year, the applicable housing cost limitation shall be calculated based on the most recent area median income information prior to such decrease. The authority shall keep confidential all

information an owner of rental housing submits to the authority under this subd. 1. c.

d. With respect to each loan under this subsection for workforce housing or senior housing intended to be owner-occupied, that for the 10-year period commencing immediately after the developer closes on the sale of the housing to the initial owner-occupier, the housing shall remain owner-occupied and may not be sold for a price that exceeds the price charged by the developer to the initial owner-occupier, adjusted annually by the average compounded annual percentage increase in the sale price of all residential housing in the county in which the housing is located, as determined by the authority. These restrictions shall be recorded against the residential property with the applicable register of deeds and shall run with the land. For the 10-year period, the authority shall publish on its website the acceptable sales price range for the residential property.

2. Any restriction recorded against the property under subd. 1. shall terminate on the date the property is acquired by foreclosure, or by an instrument in lieu of foreclosure, unless the authority determines that the acquisition is part of an arrangement a purpose of which is to terminate the restriction.

(h) In addition to other criteria explicitly provided for under this subsection, in awarding each loan under this subsection, the authority shall take into account only the following in descending order of priority:

1. Credit risk, collateral, and the need for a loan guarantee.
2. The estimated reduction in housing costs.
3. The need for workforce housing or senior housing in the area.

(5) LOANS TO GOVERNMENTAL UNITS. (a) If the authority awards a loan to a developer for an eligible project under sub. (4), the authority may award a loan from the residential housing infrastructure revolving loan fund to the eligible governmental unit having jurisdiction of the eligible project. The authority and each governmental unit receiving a loan under this subsection shall enter into an agreement establishing the term and other conditions of the loan. The eligible governmental unit may use proceeds of a loan awarded under this subsection to cover public infrastructure costs incurred by the governmental unit in connection with the eligible project that are not directly related to the eligible project itself.

(b) The authority may establish an interest rate for any loan awarded under this subsection at or below the market interest rate or may charge no interest.

(c) No loan awarded under this subsection may exceed 10 percent of the amount of the total cost of development of the residential housing supported by the eligible project.

(5m) POLICIES AND PROCEDURES. The authority shall establish policies and procedures to administer the residential housing infrastructure revolving loan fund and program under this section. The policies and procedures shall, to the extent practicable, do all of the following:

(a) Incorporate the authority's policies and procedures for establishing credit underwriting guidelines.

(b) Require that the full amount of each loan awarded under sub. (4) is secured by one or more unlimited personal guarantees, unless the developer provides no personal guarantee on any first mortgage for the eligible project and the developer's total debt associated with the project does not exceed 75 percent of the total collateral value of the project, as determined by the authority.

(c) Establish loan repayment requirements.

(6) MARKETING. The authority shall establish and administer a marketing program to advertise the loans available under this section.

(7) ANNUAL REPORTS. Beginning in 2024, no later than August 1 of each year, the authority shall submit to the joint committee on finance and under s. 13.172 (3) to the standing committees of the legislature having jurisdiction over matters related to housing a report that includes all of the following:

(a) A statement of the condition and balance of the residential housing infrastructure revolving loan fund.

(b) Information concerning each loan awarded under sub. (4) or (5), including all of the following:

1. The date, amount, amortization period, and current status of the loan.

2. An identification of the loan recipient.

3. A description of the eligible project funded with the loan, including whether the project is for workforce housing or senior housing.

4. An identification of the eligible governmental unit with respect to which the loan was awarded.

(c) The number of dwelling units created to date as a result of the loan program, the locations and sale or rental prices of the dwelling units, and whether the dwelling units constitute workforce housing or senior housing.