



2023 ASSEMBLY BILL 264

May 16, 2023 - Introduced by Representatives ARMSTRONG, O'CONNOR, BROOKS, EMERSON, STEFFEN, C. ANDERSON, DOYLE, DUCHOW, EDMING, GREEN, JOERS, MURPHY, ORTIZ-VELEZ, PENTERMAN, PETRYK, PLUMER, ROZAR, SCHRAA, SINICKI, SNYDER, SWEARINGEN, WICHGERS, SHANKLAND and KRUG, cosponsored by Senators QUINN, JACQUE, CABRAL-GUEVARA and JAGLER. Referred to Committee on Housing and Real Estate.

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

Analysis by the Legislative Reference Bureau

This bill establishes a residential housing infrastructure revolving loan fund under the jurisdiction and control of the Wisconsin Housing and Economic Development Authority. The purpose of the fund is for WHEDA to award revolving loans as provided in the bill to residential housing developers for eligible housing infrastructure projects supporting workforce and senior housing. The bill requires WHEDA, for a period of four years, to set aside 25 percent of any moneys appropriated to the fund in the 2023-25 fiscal biennium for housing infrastructure projects supporting senior housing.

The bill includes definitions of both workforce housing and senior housing. Workforce housing is defined for both rental and owner-occupied housing based on the ratio of housing costs and the ratio of household income to the area median income of the county in which the housing is located, adjusted for family size, as published annually by the federal Department of Housing and Urban Development. Under the bill, senior housing is housing that satisfies the definition of workforce housing but is intended and operated primarily for occupancy by at least one person 55 years of age or older per dwelling unit.

In accordance with a semiannual application process established by WHEDA, a residential housing developer may apply to WHEDA for a loan under the program, but WHEDA may not award the loan unless the developer and the city, village, town, or county or federally recognized American Indian tribe or band having jurisdiction

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of the housing infrastructure project (“eligible governmental unit”) demonstrate to the satisfaction of WHEDA in one or more forms prescribed by WHEDA 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.
3. The eligible governmental unit has approved the developer’s application for the loan.
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 specific housing infrastructure project to be funded by the loan by voluntarily revising zoning ordinances, subdivision regulations, or other land development regulations to increase development density, expedite approvals, reduce impact fees, or reduce parking, building, or other development costs with respect to the construction of residential housing supported by the project.
6. To the extent applicable, the eligible governmental unit is in compliance with certain statutory housing planning and reporting requirements.
7. If applicable, the eligible governmental unit has updated the housing element of its comprehensive plan required by statute within the immediately preceding five years.

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 of the bill and are otherwise acceptable to WHEDA, WHEDA is required to prioritize funding loans for eligible projects in eligible governmental units that have reduced the cost of residential housing as described in item 5 above with respect to the governmental unit as a whole. The bill also authorizes WHEDA to award loans to eligible governmental units accompanying a developer loan to assist the governmental unit in covering additional infrastructure costs incurred by the governmental unit in connection with a developer loan where such costs are not directly related to the eligible project itself.

The bill prohibits WHEDA from charging any interest on any loan awarded under the bill. Under the bill, no loan awarded to a developer may exceed 20 percent of the total cost of development, including land purchase, of the residential housing supported by the eligible project, and the bill limits loans to eligible governmental units to no more than 10 percent of the amount of the loan awarded to the developer.

The bill requires that WHEDA enter into an agreement with each developer receiving a loan under the bill that establishes the term and other conditions of the loan. The agreement is required to include certain provisions, some of which are to be recorded with the applicable register of deeds and to run with the land, that are designed to ensure that the residential housing constructed in connection with a loan remains workforce or senior housing for at least 10 years, whether rental or owner-occupied, that require owner-occupied residential housing constructed in

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connection with a loan to remain owner-occupied for at least 10 years, and that limit for a 10-year period the sales price of such owner-occupied residential housing, 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 WHEDA.

In addition to the requirement described above that WHEDA set aside for senior housing 25 percent of any moneys appropriated to the fund in the 2023-25 fiscal biennium, the bill includes other requirements relative to WHEDA's distribution of such moneys, including the following:

1. WHEDA must, for a period of four years, set aside 30 percent of such moneys for housing infrastructure projects in cities, villages, and towns with a population of 10,000 or less.

2. WHEDA must divide the state into regions based on the service jurisdiction of each regional planning commission constituted under current law, with the counties not served by a regional planning commission constituting collectively one region. Under the bill, no such region may receive more than 25 percent of such moneys in loans in any given application cycle.

Finally, the bill requires that WHEDA take actions to market the availability of loans under the bill and to submit annual reports to the Joint Committee on Finance and legislative committees having jurisdiction over housing relating to the loan program and the residential housing infrastructure revolving loan fund created under the bill.

Because this bill may increase or decrease, directly or indirectly, the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in this state, the Department of Administration, as required by law, will prepare a report to be printed as an appendix to this bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 **234.66 Residential housing infrastructure revolving loan fund and**
3 **program. (1) DEFINITIONS.** In this section:

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

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1 (b) “Developer” means a person other than a city, village, town, or county or
2 federally recognized American Indian tribe or band in this state that constructs or
3 creates residential housing.

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

6 (d) “Eligible project” means a project for housing infrastructure for workforce
7 housing or senior housing.

8 (e) “Governmental unit” means a city, village, town, or county or federally
9 recognized American Indian tribe or band in this state.

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

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

- 16 1. A water distribution system.
- 17 2. A water treatment plant.
- 18 3. A wastewater treatment plant.
- 19 4. A sanitary sewer system.
- 20 5. A storm sewer system.
- 21 6. A stormwater retention pond.
- 22 7. A lift or pump station.
- 23 8. A street, road, alley, or bridge.
- 24 9. A curb, gutter, or sidewalk.
- 25 10. A traffic device.

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1 11. A street light.

2 12. An electric or gas distribution line.

3 (g) “Residential housing” means new single-family or multifamily housing for
4 rent or sale that is subject to taxation under ch. 70.

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

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

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

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

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

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

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

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

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

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

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

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

21 **(4) LOANS TO RESIDENTIAL HOUSING DEVELOPERS.** (a) From the residential
22 housing infrastructure revolving loan fund, the authority may award loans to
23 developers to cover housing infrastructure costs for an eligible project. Any
24 developer may apply to the authority for a loan under this subsection in accordance
25 with the application process established by the authority under par. (b), but the

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1 authority may not award the loan unless the developer and the eligible governmental
2 unit demonstrate to the satisfaction of the authority in one or more forms prescribed
3 by the authority that all of the following apply:

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

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

9 3. The eligible governmental unit has approved the developer's application for
10 the loan.

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

13 5. The eligible governmental unit has reduced the cost of residential housing
14 in connection with the eligible project by voluntarily revising zoning ordinances,
15 subdivision regulations, or other land development regulations to increase
16 development density, expedite approvals, reduce impact, water connection, and
17 inspection fees, or reduce parking, building, or other development costs with respect
18 to the development of residential housing supported by the project. For purposes of
19 this subdivision, the governmental unit in cooperation with the developer shall
20 submit to the authority a cost reduction analysis in a form prescribed by the
21 authority and signed by the developer and the head of the governmental unit's
22 governing body that shows the cost reduction measures, including time saving
23 measures, undertaken by the governmental unit on or after January 1, 2023, that
24 have reduced the cost of residential housing in connection with the eligible project.
25 The signed analysis shall clearly show for each time saving or cost reduction measure

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1 the estimated time or dollar amount saved by the developer and the estimated
2 percentage reduction in housing costs.

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

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

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

17 (c) 1. The authority shall charge no interest on a loan awarded under this
18 subsection.

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

22 (d) The authority shall set aside 25 percent of all moneys deposited in the fund
23 under sub. (2) (a) 1. in the 2023-25 fiscal biennium for a period of not less than 4 years
24 following the effective date of this paragraph [LRB inserts date], for loans
25 awarded under this subsection and sub. (5) for eligible projects supporting senior

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1 housing. For purposes of this paragraph, if a loan supports both workforce housing
2 and senior housing, the amount of such loan supporting senior housing shall be
3 calculated by prorating the loan amount between the 2 uses based on the number of
4 residential housing units supported by the loan.

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

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

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

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

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

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

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1 calculated based on the most recent area median income information prior to such
2 decrease.

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

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

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

20 1. Credit risk, collateral, and the need for a loan guarantee.

21 2. The estimated reduction in housing costs.

22 3. The need for workforce housing or senior housing in the area.

23 **(5) LOANS TO GOVERNMENTAL UNITS.** (a) If the authority awards a loan to a
24 developer for an eligible project under sub. (4), the authority may award a loan from
25 the residential housing infrastructure revolving loan fund to the eligible

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1 governmental unit approving the developer's loan. The authority and each
2 governmental unit receiving a loan under this subsection shall enter into an
3 agreement establishing the term and other conditions of the loan. The eligible
4 governmental unit may use proceeds of a loan awarded under this subsection to cover
5 public infrastructure costs incurred by the governmental unit in connection with the
6 eligible project that are not directly related to the eligible project itself.

7 (b) The authority shall charge no interest on a loan awarded under this
8 subsection.

9 (c) No loan awarded under this subsection may exceed 10 percent of the amount
10 of the loan awarded to the developer under sub. (4).

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

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

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

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

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

22 2. An identification of the loan recipient.

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

