



## Legislative Fiscal Bureau

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June 2, 2011

Joint Committee on Finance

Paper #250

### **Eliminate Housing Positions and Transfer Commerce Housing Programs to WHEDA (Commerce and WHEDA)**

[LFB 2011-13 Budget Summary: Page 136, #12 and Page 530, #1]

#### **CURRENT LAW**

Commerce currently administers several state and federally-funded programs that provide housing services to low- and moderate-income households and targeted populations such as homeless persons. The Department awards state and federal grant funds to local governments, housing organizations, and local housing authorities, and coordinates state housing policy and resources. Commerce responsibilities: (a) support local organizations that provide services to help low- and moderate-income persons acquire stable living arrangements; (b) develop and sustain local capacity to provide short-term emergency shelter to homeless persons; (c) maintain a statewide centralized collection of information that links providers of affordable housing and housing support services to persons who need them; (d) maintain the state's databases relating to affordable rental housing, homelessness, and homeless services; (e) provide financial assistance for rehabilitation of housing occupied by low- and moderate-income renters and homeowners; (f) provide financial assistance with home purchase and foreclosure prevention; (g) help communities and low- to moderate-income families recover from damage from natural disasters; (h) develop state housing policy and coordinate housing programs with other state and local housing and community development agencies by making annual updates to a comprehensive five-year federally-required housing strategy plan; (i) provide information to local organizations about affordable housing resources; (j) prepare reports on bills that are introduced in the Legislature directly or substantially affecting the development, construction, cost or availability of housing in the state; and (k) prepare reports on administrative rules proposed by state agencies directly or substantially affecting the development, construction, cost or availability of housing in the state.

Commerce administers programs with a combination of GPR, PR and FED. State funds provide the following types of assistance: (a) help homebuyers purchase an affordable home by

providing assistance with down payment and closing costs; (b) provide grants to local organizations to operate homeless shelters and transitional housing and to provide associated supportive services for homeless persons; and (c) fund homeless prevention and critical assistance programs to help renters retain housing and homeowners prevent foreclosure.

Commerce administers federal funds granted by the U.S. Department of Housing and Urban Development (HUD), including: (a) the Home Investment Partnerships Program (HOME) to support homeownership, owner-occupied housing repairs, owner-occupied accessibility improvements, rental rehabilitation, rental housing development, and rental assistance; (b) grants to local governments or agencies to operate emergency shelters, as the HUD-designated Wisconsin agency for administering the distribution of federal funds under the Stewart B. McKinney Homeless Assistance Act; (c) Community Development Block Grant (CDBG) – housing rehabilitation funds to support grants to municipalities for housing rehabilitation, acquisition, relocation, handicapped accessibility improvements, and home ownership assistance; (d) the Neighborhood Stabilization Program to provide emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties; (e) the Homelessness Prevention and Rapid Re-Housing Program to provide financial assistance and services to prevent households from becoming homeless and to help homeless households quickly obtain housing; (f) lead hazard control grants to eliminate lead-based paint hazards from homes occupied by low-income families with children under age six; (g) Housing Opportunities for Persons with AIDS funds; and (h) Projects for Assistance in Transition from Homelessness funds to help local agencies provide housing services to people who have serious mental illness and are homeless.

The Wisconsin Housing and Economic Development Authority (WHEDA) is a public body corporate and politic which primarily sells taxable and tax-exempt mortgage revenue bonds and uses the proceeds to fund loans to eligible homebuyers, housing developers and businesses at below market interest rates. WHEDA is not a state agency and its employees are not state employees, but they do participate in the Wisconsin retirement system for public employees. The WHEDA operating budget is not included in the state budget and is not subject to direct legislative control.

## **GOVERNOR**

Delete \$5,063,000 GPR and 4.95 GPR positions, \$1,013,700 PR, \$34,632,400 FED and 13.95 FED positions annually and transfer the housing programs to WHEDA. WHEDA would be provided with the same amount of funding that would be eliminated under Commerce for administration and housing assistance programs. The position authority and incumbents holding the positions would not be transferred to WHEDA under the bill because WHEDA staff are not state employees.

*Transfer of Funds.* The following table shows the housing program appropriations, base funding under Commerce, and funding appropriated to WHEDA under the bill. Separate actions under the bill affected Commerce appropriations before the transfer of the remaining amounts to WHEDA.

**Housing Program Appropriations,  
Commerce Base Funding and Funding Transferred to WHEDA**

<u>Appropriation Name</u>	Commerce 2010-11 Base <u>Funding</u>	WHEDA 2011-12 <u>Appropriation</u>	WHEDA 2012-13 <u>Appropriation</u>
<b>Administration</b>			
General program operations - general fund	\$574,400	\$509,400	\$509,400
General program operations - federal revenues*	<u>1,285,300</u>	<u>1,632,400</u>	<u>1,632,400</u>
Subtotal -- Administration	\$1,859,700	\$2,141,800	\$2,141,800
<b>Housing Programs</b>			
<b>General Fund</b>			
Housing grants and loans	\$3,097,800	\$3,097,800	\$3,097,800
Shelter for homeless and transitional housing grants	1,413,600	1,413,600	1,413,600
Mental health for homeless individuals (Projects for Assistance in the Transition from Homelessness)	<u>42,200</u>	<u>42,200</u>	<u>42,200</u>
Subtotal -- GPR	\$4,553,600	\$4,553,600	\$4,553,600
<b>Program Revenues</b>			
Funding for the homeless - Interest on real estate trust accounts (IBRETA)	\$469,300	\$422,400	\$422,400
Housing program services - Payments from other state agencies	469,300	422,400	422,400
Housing program services - Payments from non-state agency entities	<u>187,700</u>	<u>168,900</u>	<u>168,900</u>
Subtotal -- PR	\$1,126,300	\$1,013,700	\$1,013,700
<b>Federal Revenues</b>			
Housing - federal aid, local assistance*	\$10,000,000	\$10,000,000	\$10,000,000
Housing - federal aid, individuals and organizations*	<u>23,000,000</u>	<u>23,000,000</u>	<u>23,000,000</u>
Subtotal -- FED	\$33,000,000	\$33,000,000	\$33,000,000
Subtotal Housing Assistance Programs	\$38,679,900	\$38,567,300	\$38,567,300
Total Housing Administration and Assistance	\$40,539,600	\$40,709,100	\$40,709,100

\* Federal appropriations are estimates of amounts available.

*Transfers of Program Assets.* Specify that the assets, liabilities, tangible personal property, and records of Commerce related to the transferred housing programs, as determined by the Secretary of the Department of Administration (DOA), shall become the assets, liabilities, property, and records of WHEDA on the effective date of the bill.

Specify that all contracts entered into by Commerce before the effective date of the bill that are related to the transferred housing programs, as determined by the Secretary of DOA, remain in effect on the effective date of the bill and are transferred to WHEDA. Require WHEDA to carry out any obligations under the contract until the contract is modified or rescinded by WHEDA to the extent allowed under the contract. Require DOA to ensure performance of a duty or satisfaction of an obligation transferred from Commerce to WHEDA if WHEDA fails to perform the duty or satisfy the obligation.

*Transfers of Other Statutory Requirements.* Transfer, from Commerce to WHEDA, the requirement to prepare a comprehensive five-year state housing strategy plan. Require WHEDA, rather than Commerce, to: (a) submit the plan to the U.S. Department of Housing and Community Development; (b) include specific information in the plan such as the state's housing policies and recommendations, discussion of major housing issues, evaluation of housing

conditions and housing assistance needs in the state, and strategies for utilizing federal funding and coordinating federal and state housing efforts; (c) annually update the plan; and (d) annually submit the plan to the Governor and Legislature.

Transfer, from Commerce to WHEDA, the requirement to prepare a report on the effect of any bill introduced in the Legislature affecting the development, construction, cost or availability of housing in the state. Require WHEDA, rather than Commerce, to include information in the report about the effect of the bill on housing costs, the state housing strategy plan, the cost of constructing and rehabilitating housing, and on low- and moderate-income households.

Transfer, from Commerce to WHEDA, the requirement to collect from real estate brokers and salespersons any earnings on interest-bearing real estate trust accounts (IBRETA) that hold client funds. Authorize WHEDA and DSPS, rather than Commerce and the Department of Regulation and Licensing currently, to examine and audit these accounts. Currently, real estate brokers and salespersons deposit down payments, earnest money, and similar types of real estate payments in a pooled interest-bearing trust account, and pay the amount in excess of \$10, less service charges or fees, to Commerce. Commerce uses the IBRETA earnings to supplement grants made under the transitional housing, state shelter, and homeless prevention program. The requirements for real estate brokers and salespersons (other than where funds are transmitted) would remain the same. WHEDA, rather than Commerce, would make grants under the program.

*Provisions Repealed Rather Than Transferred to WHEDA.* Repeal the requirement that if an agency proposes an administrative rule that directly or substantially affects the development, construction, cost, or availability of housing in the state, Commerce would be required to prepare a report about the effect of the proposed rule on housing before the rule is submitted to the Legislative Council staff for review. Currently, Commerce is required to prepare the report within 30 days after the rule is submitted to Commerce. The report is required to contain information about the effect of the proposed rule on: (a) the policies, strategies and recommendations of the state housing strategy plan; (b) the cost of constructing, rehabilitating, improving or maintaining single family or multifamily dwellings; (c) the purchase price of housing; (d) the cost and availability of financing to purchase or develop housing; and (e) housing costs. Commerce is also required to include an analysis in the report of the impact of the proposed rule on low- and moderate-income households.

Repeal requirements related to use of surplus state-owned real property under s. 560.9810, which currently require: (a) Commerce to petition the head of any state agency having jurisdiction over real property that Commerce determines to be suitable for surplus; (b) the head of the state agency having jurisdiction over the property to notify Commerce in writing whether or not the agency considers the property to be surplus; (c) if the state agency considers the property to be surplus, and if Commerce determines the property is suitable, the state agency shall transfer the property, without payment, to Commerce for purposes of transferring to an applicant; (d) Commerce to be authorized to transfer the property to an applicant under a written agreement that includes a provision that the applicant agrees to pay Commerce an amount to utilize the real property in conformance with the agreement; (e) Commerce to record the agreement with the Register of Deeds for the county in which the property is located; and (f) that

these surplus property provisions do not apply to property that is authorized to be sold by DOA under s. 16.848 (general sale of surplus properties provisions).

## **DISCUSSION POINTS**

1. The now-dissolved Department of Development (DOD) (predecessor to the Department of Commerce) administered certain housing programs and prepared a state housing plan prior to 1985. In 1985, those responsibilities were transferred to WHEDA. In 1989 Act 31, the programs were transferred to DOA to a new Division of Housing (later the Division of Housing and Intergovernmental Relations). In addition, state legislation in 1989 and 1991 created state-funded housing programs and designated DOA as the agency for administering most federally-funded housing programs.

2. At the time the Division was created in 1989, the Governor initially recommended consolidating state housing functions under DOD because of the agency's involvement in several community development functions. Legislative consideration was also given to creating a separate Department of Housing, or assigning the housing functions to the former Department of Health and Family Services or DOA. The final decision in 1989 was to assign housing programs to DOA, and create two new housing grant programs to provide housing grants to local housing organizations. The Division of Housing was charged with improving housing opportunities for low- and moderate-income households.

3. In 1989, DOA was primarily an administrative agency, although there were some programmatic functions assigned to DOA. While some consideration was made as to whether locating housing programs in DOA would provide sufficient emphasis to the programs, assigning state housing programs to DOA was not viewed as unprecedented.

4. State housing programs were transferred from DOA to Commerce in 2003 Act 33. At that time, the move was viewed as compatible with the Commerce functions related to economic development, public facilities, brownfields redevelopment, technical assistance, and administration of federal funding for the small cities Community Development Block Grant (CDBG) program, manufactured home regulation, and residential building code regulations. The 2011-13 biennial budget bill would transfer the economic development programs from Commerce to the Wisconsin Economic Development Corporation (WEDC) and transfer regulation of residential building codes and manufactured homes to the Department of Safety and Professional Services (DSPS).

5. When the 2011-13 biennial budget bill was introduced, the Executive Budget Book indicated the reason for the proposed transfer to WHEDA was to consolidate housing programs in one entity. Administration and Commerce officials indicated that incumbent Commerce housing staff would be offered positions with WHEDA or WEDC, or would be transferred to DSPS. WHEDA officials subsequently indicated all Commerce housing staff would have an opportunity to apply for positions with WHEDA.

6. On March 30, 2011, the Executive Director of WHEDA testified to the Joint Committee on Finance that transferring the Commerce housing programs to WHEDA was a good idea because: (a) WHEDA is an experienced provider of housing, special needs housing, and

rehabilitation services to low- and moderate-income families; (b) WHEDA and its customers regularly use some of the transferred programs; and (c) WHEDA has worked with Commerce housing staff in the past.

7. In April, 2011, administration officials informed Commerce housing staff that the program and their positions would be transferred to DOA. Commerce and WHEDA officials had begun discussions about the transition of the program from Commerce to WHEDA, but stopped planning for the move after the administration notified them of the change in plans.

8. WHEDA indicated that, at the time discussions with Commerce stopped, the Authority had not determined: (a) how it would incorporate the Commerce housing programs into its current programs; (b) what types of memoranda of agreement might be required to administer federally-funded programs; (c) how it would support grant programs to nonprofit organizations that differ in focus than the profit-making current functions of the Authority; (d) whether an ongoing appropriation of state funds may affect its status as an independent authority and ability to issue mortgage revenue bonds; (e) the process it would use to update the state's five-year comprehensive housing plan; and (f) any agreements that might need to be entered into with HUD, DOA, WEDC, or other agencies for administration of programs currently administered by Commerce. Further, WHEDA had not determined how many employees it would hire to staff the programs, and how many of them might be current Commerce employees, and had not accepted the financial liability of sick and sabbatical leave accrued by current Commerce employees who might apply for jobs with WHEDA.

9. The administration has not submitted a written recommendation to the Joint Committee on Finance regarding transferring the housing program to DOA. DOA budget office staff made suggestions to the Legislative Fiscal Bureau about how the bill could be amended to transfer the housing program to DOA instead of to WHEDA.

10. The Department of Administration indicates that, since introduction of the budget, the administration has determined that DOA would be better suited to continue the housing programs than WHEDA. DOA provided the following information.

"After more closely reviewing the current programs WHEDA offers as well as the overall mission of WHEDA, the Administration determined that DOA would be better suited to continue the housing assistance programs than WHEDA. WHEDA essentially functions like a bank, making loans and receiving repayments of previous loans to fund their operations. Whereas WHEDA has little experience providing grants, DOA has much more experience handling grant money - both state and federal. The programs in Commerce related to housing are largely involved in providing grants to community-based organizations such as homeless shelters and transitional housing services. The umbrella organizations receive state/federal funding through DOA and then administer programs that benefit large groups of citizens. Conversely, the largest portion of WHEDA's portfolio consists of loans to individual homeowners."

11. In February, 2011, Commerce asked U.S. HUD whether WEDC, as a public-private instrumentality of the state, could directly receive and administer funds from HUD. (Commerce officials asked about WEDC, rather than WHEDA, before the budget bill was introduced, when discussions included the possibility of transferring housing programs to WEDC. WEDC and

WHEDA are both structured as authorities.) HUD provided Commerce with information about conditions the federal agency would place on distribution of federal housing grant funds to "an instrumentality of the state." HUD raised four main concerns. First, HUD indicated that under the federal emergency shelter grant program, a "State" does not include an instrumentality of a state. Thus, the state must receive the federal grant and is responsible for the administration of the program. In addition, a state must only subgrant emergency shelter grants to local government and private nonprofit organizations, so could not subgrant funds to WEDC or WHEDA. Second, HUD noted that several HUD housing programs are subject to federal environmental review procedures for disbursement of grant funds, and review is performed either by the state or local government grant recipients. The state must assume environmental review responsibilities for any non-governmental entity that may participate in the project. HUD indicated the authority of a state entity to act as the state for purposes of environmental review would depend on the authorizing language in various federal programs. Third, HUD indicated that for purposes of the Community Development Block Grant (CDBG) program, a state instrumentality may act as the state for purpose of releasing funds to a local government as long as the instrumentality is acting as the state generally for CDBG purposes, has been approved by the Governor to act as the state in reviewing requests for release of funds. Finally, HUD requested Commerce to provide an Attorney General's opinion supporting the designation of WEDC (as referenced in the original question) as an instrumentality of the State of Wisconsin.

12. Commerce also asked the federal Substance Abuse and Mental Health Services Administration in the U.S. Department of Health and Human Services whether WEDC would be eligible to serve as the recipient of federal Projects in Assistance for Transition from Homelessness (PATH) funding in Wisconsin. The federal agency responded that if Wisconsin transfers administration of the PATH program from Commerce to another entity, Wisconsin would need to submit a letter from the Attorney General confirming the new entity administering the program is a "State" that will grant funds solely to political subdivisions of the state and nonprofit private entities.

13. The federal housing programs administered by Commerce include state or local match requirements. For example, federal HOME (housing investment partnership program) program requires a 25% match for local disbursements for homebuyer, housing rehabilitation, rental housing development, and tenant based rental assistance. The emergency shelter grant program requires a dollar for dollar match for local assistance disbursements. Commerce uses the GPR administrative appropriation to meet match requirements for federal administrative funds, and the GPR housing programs assistance appropriations to match federal funds provided for local assistance. Local recipients also provide match funds. If administration of the federal programs was transferred to WHEDA, and if no state appropriation was provided to WHEDA to meet match requirements, it is uncertain how the state or local match would be provided.

14. Administration officials indicated budget reductions were not made in Commerce housing appropriations to reflect fringe benefit cost reductions associated with increased state employee contributions for Wisconsin Retirement System benefits and health insurance coverage before transferring the administrative funding to WHEDA. They indicate no reductions were made because WHEDA is not a state agency and its employees are not considered state employees. However, they do participate in the Wisconsin Retirement System and in the state's health insurance programs. If the Committee chooses to transfer housing programs to DOA instead of to WHEDA,

the funding provided to DOA could factor in the fringe benefit reductions proposed in the bill for all state employees.

15. Administration and Commerce officials identified 25 (6.05 GPR and 18.95 FED) positions in Commerce performing housing functions, rather than the 18.9 (4.95 GPR and 13.95 FED) deleted from the housing program under the bill. DOA officials indicate the additional 6.1 positions are either currently funded in Commerce economic development appropriations (deleted under the bill) or are FED positions created after July 1, 2010. DOA Budget Office officials suggest 25 positions be provided to DOA rather than 18.9.

16. While the DOA Budget Office did not recommend specific changes in administrative funding levels related to provision of 25 positions rather than 18.9. Based on a reestimate of the GPR and FED funding needed for the salary and fringe benefits of the 25 positions that could be transferred to DOA, and factoring in the fringe benefit reductions planned for other state employees the housing program would require administrative funding in DOA of \$527,800 GPR annually for 6.05 positions (\$18,400 higher than provided to WHEDA) and \$1,467,400 FED annually for 18.95 positions (\$165,000 less than provided to WHEDA).

17. If the Committee chooses to transfer Commerce housing programs to DOA rather than to WHEDA, it could provide funding for the 25 positions identified as housing positions, current funding levels for the identified positions, and fringe benefit reductions being made for other state employees [Alternative 2].

18. If the program is transferred to DOA instead of to WHEDA, it would be appropriate to include the same type of protections for incumbent housing employees transferred to DOA as is provided under the bill for employees transferred from Commerce to the Department of Safety and Professional Services (DSPS). The bill could be amended to provide that positions and all incumbent employees holding those positions in Commerce performing duties primarily related to the housing programs, as determined by the Secretary of DOA, would be transferred to DOA on the effective date of the bill. Employees transferred under the provision would have the same rights and status related to state employment relations under Chapter 111 and 230 of the statutes. Transferred employees who have attained permanent status would not be required to serve a probationary period [Alternative 2].

19. The bill deleted, rather than transferred to WHEDA, the requirement for preparation of a report on the effect of proposed administrative rules on housing. As a non-state agency, WHEDA does not promulgate administrative rules. If the housing programs are transferred to DOA, rather than Commerce, the bill could be amended to have the DOA housing program write the report on the effect of proposed rules on housing [Alternative #2].

20. The bill also deleted, rather than transferred to WHEDA, provisions related to use of surplus state-owned property, because WHEDA is not a state agency. If the housing programs are transferred to DOA, this provision could also be transferred to DOA.



## ALTERNATIVES

1. Approve the provisions in the bill to: (a) transfer housing programs from Commerce to WHEDA; (b) repeal the authority to request certain surplus real property, at no cost, from other state agencies; and (c) repeal the requirement to report on the impact of proposed administrative rules on housing and state housing policy.

2. Transfer housing programs from Commerce to DOA (instead of to WHEDA), as follows: (a) delete \$5,063,000 GPR, \$1,013,700 PR, and \$34,632,400 FED annually from WHEDA; (b) change all references in the bill that transfer housing programs and appropriations to WHEDA, to instead specify DOA; (c) provide DOA with \$5,081,400 GPR and 6.05 GPR positions, \$1,013,700 PR, \$34,467,400 FED and 18.95 FED positions annually; (d) transfer all positions and all incumbent employees holding those positions in Commerce performing duties primarily related to the housing programs, as determined by the Secretary of DOA, to DOA on the effective date of the bill, and specify employees transferred under the provision would have the same rights and employment status, and would not be required to serve a probationary period; (e) transfer from Commerce to DOA, the authority to request certain surplus real property, at no cost, from other state agencies; and (f) transfer from Commerce to DOA, the requirement to report on the impact of proposed administrative rules on housing and state housing policy.

ALT 2	Change to WHEDA		Change to DOA		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	-\$10,126,000	0.00	\$10,162,800	6.05	\$36,800	6.05
PR	- 2,027,400	0.00	2,027,400	0.00	0	0.00
FED	<u>- 69,264,800</u>	<u>0.00</u>	<u>68,934,800</u>	<u>18.95</u>	<u>- 330,000</u>	<u>18.95</u>
Total	-\$81,418,200	0.00	\$81,125,000	25.00	-\$293,200	25.00

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