Washington State Department of Commerce

Supportive and Emergency Housing Dispute Resolution

Pursuant to Chapter 376, Laws of 2024 (SB 5950, Sec. 128(36))

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Report to the Legislature

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GROWTH MANAGEMENT SERVICES
LOCAL GOVERNMENT DIVISION

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Executive summary

Overview

The supportive and emergency housing dispute resolution program was funded in the 2024 State Supplemental Budget and launched in October 2024. This program responds to the immense and urgent need for emergency shelter, transitional housing, emergency housing, and permanent supportive housing (STEP) facilities in Washington by supporting mediation between housing providers and jurisdictions for issues that arise in permitting. It is part of a larger effort to develop STEP including numerous statewide policies, goals and requirements for meeting low-income housing needs, as well as diligent work by stakeholders and communities.

No parties have successfully completed the mediation process as of January 2025. However, inquiries about the program and results of outreach with stakeholders and partners suggest it has potential to fill a critical gap. Continued funding will ensure jurisdictions and STEP providers have an opportunity to forge collaborative approaches to housing development.

Authorizing statute

This report satisfies the legislative requirement in Section 128 (36) of Chapter 376, Laws of 2024 (ESSB 5290):

> (36) $600,000 of the general fund—state appropriation for fiscal year 2025 is provided solely for the department to provide technical assistance to local governments in planning for and siting supportive housing and emergency housing facilities; and provide dispute resolution services to help resolve disputes between local governments and service providers attempting to site supportive housing and emergency housing facilities. The department shall submit a report, pursuant to RCW 43.01.036, to the appropriate committees of the legislature by March 1, 2025, on which local governments received funding and resolution status for disputes resolved.

Program highlights

- Dispute resolution services are available to all local governments and STEP developers as of October 2024.
- To date, two housing providers have sought dispute resolution services related to conditions of a project permit. In both cases, the local jurisdiction did not choose to participate in mediation, so the requests did not move forward.
- Technical assistance funded through this proviso has supported more than 40 jurisdictions in developing effective STEP regulations.
- While the STEP authorizing statute includes the ability to provide local governments funding, the appropriated funds were dedicated to community technical assistance, outreach, and set asides for on-call dispute resolution consultants.

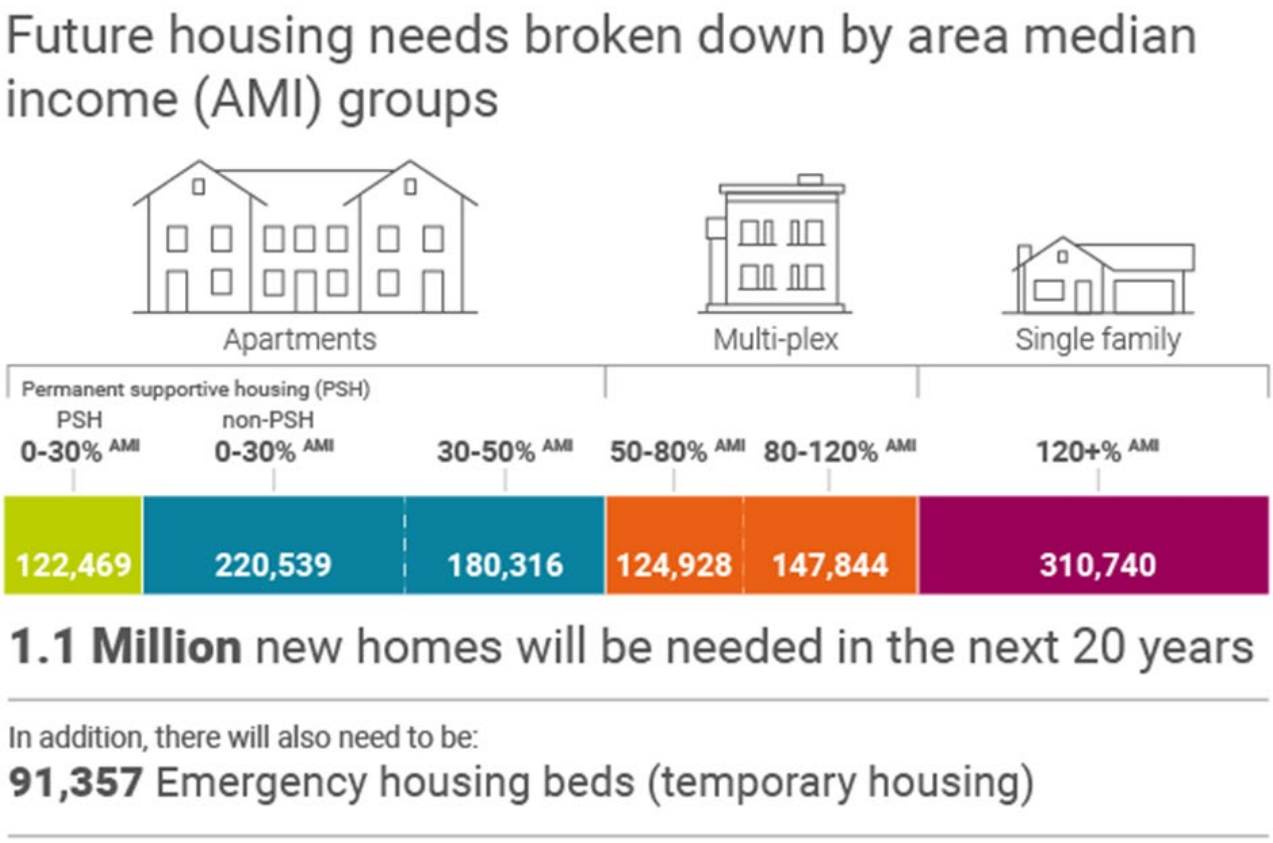
The Legislature provided funding for the STEP dispute resolution program on a one-time basis for fiscal year 2025. Outreach and inquiries suggest mediation services are relevant and of interest to jurisdictions and housing developers. Funding will be needed to continue the program, which has benefitted many local jurisdictions in developing STEP regulations.

Supporting housing development

Washington needs more supportive and emergency housing

Washington has a shortage of homes affordable to its lowest-income residents. As of 2023, the Department of Commerce projected a need for 1.1 million new homes by 2044, with almost half affordable to residents at the lowest income levels (50% of area median income (AMI) and below). [1] Permanent supportive housing and transitional housing meet the needs of a segment of the lowest-income population that faces barriers to maintaining tenancy in typical housing arrangements. These housing types address the needs of individuals exiting or at-risk of homelessness by pairing units with supportive services. People facing homelessness in Washington will drive a need for approximately 91,360 beds of emergency housing and shelter by 2044[2] even if all needed housing is produced. Meeting these needs requires the production of emergency shelter, transitional housing, emergency housing, and permanent supportive housing (STEP) in communities across the state.

Figure 1: More than 1.1 million new homes will be needed by 2044, with almost 50% affordable to the lowest-income households



[1] Department of Commerce, Planning for Housing in Washington State. Based on Office of Financial Management population projections.
[2] This projection of emergency housing and emergency shelter is based on affordable housing production in 2023.

STEP faces barriers to development

STEP providers can pursue a variety of building and facility types. Regardless of the form it takes, permanent supportive housing requires tenants to enter a lease, while emergency and transitional housing may or may not have such a requirement. City and county governments often collaborate with nonprofits or housing authorities to build and operate STEP.

In addition to the normal cost and time barriers associated with permitting and development, STEP is often subject to these barriers:

- A complicated funding process involving many funding sources with differing requirements.
- Unclear development regulations and regulations that may be inconsistent with state and federal law.
- STEP requirements that differ from those for general housing development.
- Conditional use permits, design review requirements and discretionary review processes that add time, delay and uncertainty.
- Development regulations that include spacing requirements (e.g., minimum distances from parks, schools or other facilities), facility operating and reporting requirements, additional documentation during the permitting stage, and/or arbitrary limits on occupants or operation.

Local government regulations are key

State law shapes how local jurisdictions regulate supportive and emergency housing

All local governments fully planning under the Growth Management Act (GMA)[3] are required to plan for and accommodate housing affordable to all income levels, including emergency housing, emergency shelter and permanent supportive housing.[4] Cities in both fully and partially planning counties must adhere to specific requirements for zoning and regulating STEP in RCW 35A.21.430 and RCW 35.21.683, respectively. These requirements were adopted in 2021 with Chapter 254, Laws of 2021(HB 1220).

Under the law, cities:

- May not prohibit emergency shelter and emergency housing in areas where hotels or motels are allowed, unless the city has already allowed these uses in at least 50 percent of zones within one mile of transit.
- May not prohibit permanent supportive housing and transitional housing in areas where residential dwellings or hotels are allowed.
- May establish reasonable local restrictions on spacing, occupancy and intensity of use for STEP to protect public health and safety.
- May not impose restrictions on STEP that prevent the development of a sufficient number of units to meet the city's local share of countywide housing needs projected by the Washington State Department of Commerce and allocated to the city.

[3] RCW 36.70A.040
[4] RCW 36.70A.070(2)

Local governments and STEP developers can avoid disputes by taking a proactive approach

Project applicants

- Meet with planning staff early in the process to discuss requirements for the proposed project to ensure:
  - The project can proceed in the proposed location
  - The applicant understands the requirements for zoning, parking and costs for the development, and
  - The applicant understands any other requirements for the proposed land use under the local government's regulations.
  - Develop a plan for addressing potential community concerns.
  - Work with consultants to facilitate collaboration with planning staff, including changes to the project to align with local requirements and identify any interpretations of local regulations.

Local governments

- Ensure development regulations are consistent with statutory requirements and do not impose undue barriers for STEP.
- Engage with applicants early in the process to ensure developers have the information they need to design a proposal consistent with local regulations.
- Be transparent with the community about these developments and communicate effectively about why they are needed.
- Coordinate with STEP providers to address community concerns.

Dispute resolution program supplements existing processes for challenging permitting decisions and regulations

The dispute resolution program provides an additional avenue for developers and local governments to resolve conflicts related to siting STEP.[5] Before this option became available, formal processes to resolve disagreements over regulations or permitting decisions were limited and costly.

For development regulations:

- Adopted regulations can be challenged within 60 days of the published decision through an appeal to the Growth Management Hearings Board in fully planning jurisdictions. In partially planning jurisdictions, challenges must be filed through the court system within 21 days of the decision.
- Further appeals are through the Superior Court and must be filed within 30 days of the hearings board's decision.

For project permits:

- Project permit decisions may be appealed to a local council or ideally a hearings examiner. However, jurisdictions are not required to allow for administrative appeals.[6]
- In places with no administrative appeal process, contested project permits may be appealed under the Land Use Petition Act.

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[5] Development regulations determine where, how and through what process individual development projects are approved. They are adopted via ordinance at the local level through a legislative decision process by an elected body of officials. After regulations are adopted, they are implemented through permitting decisions for specific projects.
[6] RCW 36.70B.110(9)

In many cases, existing legal remedies may not be ideal for resolving conflicts during the pre-development stage of a project. Existing remedies require parties to retain legal counsel, and filing and responding to legal challenges can drain resources. This may be particularly prohibitive for small nonprofits involved in STEP development. Additionally, legal action may damage relationships for governments and housing developers likely to work together again.

Lastly, permit delays drive costs and may jeopardize a project.

In many cases, mediation may be more desirable. It's free for communities to access, less adversarial and may bring an expedient resolution.

Commerce resources support local jurisdictions in implementing state requirements

Since 2021 and the passage of Chapter 254, Laws of 2021 (HB 1220), Commerce has developed many tools to assist cities, towns and counties in meeting state requirements for siting STEP. These include:

- Projected housing needs for all income levels, to inform evaluation of land capacity for emergency housing and permanent supportive housing as required by RCW 36.70A.070(2)(c).
- "STEP State of the Practice Report," which summarizes state and federal regulations, existing local practices, and best practices.
- "STEP Model Ordinance, User Guide, and Best Practices Report" provides detailed guidance to local jurisdictions.
- A communications toolkit helps jurisdictions communicate effectively about STEP.
- A checklist for state STEP requirements helps local jurisdictions create STEP codes consistent with statutory requirements.

Jurisdictions and developers share a need for collaboration in overcoming barriers

The dispute resolution program responds to the experiences of jurisdictions, housing developers and other stakeholders, many of whom have voiced a need for additional support.

- Local housing developers described concerns about projects denied due to pressure from small numbers of community members, as well as onerous zoning regulations that prevent nonprofits from providing housing.
- Local government staff likewise underscored the need for dispute resolution services to facilitate STEP development.
- Other stakeholders spoke to the possibility for some parties to undermine collaboration between local and state governments by opposing STEP at the permitting stage.

These key groups shared a consensus that dispute resolution is needed to address challenges related to STEP siting and permitting.

Supporting housing development

The state Legislature appropriated funds in the 2024 supplemental operating budget to support dispute resolution between local governments and service providers attempting to site STEP.[7] Commerce used these funds to retain on-call services from dispute resolution firms who will mediate disagreements related to STEP siting and permitting. Mediated resolution services are intended to further housing development by helping local governments and housing developers collaboratively address areas of disagreement about regulations or permitting conditions.

This proviso also funds technical assistance to local governments in developing effective local codes to permit STEP, consistent with statutory requirements. Improving local regulations may prevent situations that lead to requests for mediation.

Addressing barriers to STEP siting

Dispute resolution firms provide mediation services

Commerce has contracted with three firms to provide on-call mediation services to the STEP dispute resolution program:

- Fulcrum Institute Dispute Resolution Clinic
- Pierce County Center for Dispute Resolution
- Skullnah Legal Services, PLLC

These firms went through a competitive Request for Proposals process initiated in April 2024 and completed in August 2024. The procurement combined mediation services for STEP dispute resolution with services to provide tribal mediation along with mediation on general issues related to GMA requirements. The selection criteria emphasized diversity and familiarity with tribal law and the GMA. If provided funding, Commerce intends to renew existing contracts with all dispute resolution firms who fulfill expectations, and to re-open the procurement process annually to bring in new firms.

Program implementation

Growth Management Services finalized procedures and guidelines for the dispute resolution program in September 2024. This information is published online to provide transparency to prospective participants and the public.[8, 9]

Who may request to participate in the dispute resolution program?

- An organization involved in developing STEP, such as a developer, operator or project applicant
- A jurisdiction, such as a county, city or town, in which a STEP project is planned or seeking a permit

Interested parties may submit a request for mediation services by emailing the program with basic information about the project, the dispute and any steps taken toward resolution. Both parties must consent to participate.

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[7] ESSB 5950, Section 128 (36)
[8] GMS Mediation Services webpage
[9] Housing Dispute Resolution Process (PDF)

If one party chooses not to participate, Commerce will provide information on alternatives to dispute resolution.

Mediation services will be available for disputes over permits or adopted regulations for STEP siting

Mediation services through the dispute resolution program will be available in the following circumstances:

- When a jurisdiction denies a permit for a STEP project
- When a dispute arises between a jurisdiction and a STEP developer during the permitting process, as early as the pre-application meeting
- When a jurisdiction's regulations prevent the siting of a STEP project and may be inconsistent with state requirements, regardless of whether the jurisdiction's comprehensive plan periodic update is complete
- When a local government attempts to close or relocate a STEP project, such as through formal notice of violation, communication of intent to revoke a permit, or resolution to close or relocate a project.

Mediation will progress through these steps:

- Commerce receives a request for mediation.
- Commerce will determine eligibility for dispute resolution services within three business days of receiving a request.
- If the request is eligible, Commerce will contact the jurisdiction to notify them of the dispute resolution request, ask if there are steps that can be taken to address concerns before moving to dispute resolution, or, if there is not an alternative path, if they are willing to engage in dispute resolution.
- If and when the path is dispute resolution, Commerce will:
    - Notify each party with next steps.
    - Contract with on-call dispute resolution consultants to begin the mediation process within two to three weeks of confirming dispute resolution process is possible.
    - Notify the Housing Division of the dispute resolution request to ensure Commerce staff is aware of any potential disputes related to projects funded by Commerce and possible delays.
    - If applicable, review the jurisdiction's code for consistency with state statute, then distribute review notes to the dispute resolution consultant.
- The dispute resolution consultant will lead the mediation process, including coordinating meetings and engaging parties. Commerce staff will participate as a supportive housing subject matter expert only if requested by the consultant.
- When the mediation process is complete, the consultant will deliver a memo summarizing the problem statement and if a resolution was reached. Information that both parties are willing to share will be retained by Commerce and be publicly available upon request, such as a summary of the mediated agreement.
- Commerce will support implementation of negotiated agreements where appropriate, such as through technical assistance for jurisdictions to amend code or for project applicants to develop an application consistent with local regulations.

The timeline for services will vary but is estimated to take four to six weeks.

Requests for dispute resolution

Requests for dispute resolution to date:

- Two housing providers sought dispute resolution services related to conditions of a project permit. In both cases, the permitting jurisdiction chose not to participate in mediation, so the requests did not move forward.

Results of dispute resolution

No siting disputes regarding supportive or emergency housing have been resolved through mediation to date.

Insight from outreach and engagement

Commerce has received several inquiries suggesting unmet needs and areas where the program may benefit from further refinement.

- Transitional housing: Outreach to the Department of Corrections suggests some barriers to siting transitional housing are unique to re-entry housing and may benefit from focused support. Barriers include noticing and public messaging requirements, as well as misconceptions among local planning staff about how such uses should be classified.
- Behavioral health facilities: Service providers have expressed interest in receiving mediation services to resolve disputes around siting behavioral health facilities. Behavioral health facilities are facilities that provide behavioral health assessment, intervention and treatment services on-site to support residents with substance use, mental health or co-occurring disorders.[10] Some examples of behavioral health facilities are residential treatment facilities, crisis triage and stabilization facilities, and mental health peer-run respite centers. This may represent a potentially significant area of unmet need. However, it is unclear whether behavioral health facilities are considered supportive and emergency housing, for reasons outside the scope of this report.

Program funding supports direct assistance to jurisdictions

In addition to activities directly related to implementation of the dispute resolution program, Commerce is using the proviso funding to provide technical assistance to local governments as they develop regulations for STEP siting. This includes one-on-one meetings with jurisdictions and standing "office hours" for technical assistance. The team has completed detailed reviews of development regulations for STEP that are submitted to Commerce, and provided recommendations to jurisdictions whose regulations are inconsistent with state law. While many jurisdictions have made updates to allow these housing types in appropriate areas as required by statute, many have added restrictions making it more difficult to site STEP. To date, more than 30 cities have received detailed reviews of code amendments for STEP types.

This work has yielded insights on challenges and opportunities for regulation of STEP at the local level. Commerce will continue to refine guidance for local governments on meeting state requirements. One area of focus has been the requirement that cities may only impose "reasonable" occupancy, spacing, and intensity of use requirements on STEP to protect public health and safety.[11] This requirement has yielded confusion for local jurisdiction staff and officials about defining reasonability and how standards should be documented as necessary to protect public health and safety.

[10] WAC 246-341-1105
[11] RCW 35.21.683, RCW 35A.21.430

Stakeholder outreach has been far-reaching

Commerce has shared information about this program with interested parties through many platforms and has had frequent discussions with communities about dispute resolution services and goals:

- Growth Management Services newsletter and webpages
- Emails to permanent supportive housing stakeholders, the State Advisory Council on Homelessness, and other stakeholders engaged with state affordable housing work.
- Presentations at industry gatherings including the Housing Washington conference, the Washington chapter of the American Planning Association conference, the Homeless Assistance Unit and Office of Homeless Youth convening of emergency housing service providers, and a meeting of permanent supportive housing providers.
- Staff coordination with Housing Trust Fund, Apple Health and Homes, and Housing Division staff to distribute program information to housing providers.
- Presenting materials to the Affordable Housing Advisory Board in a virtual meeting and via email.

Continued funding will support future STEP

Commerce's sustained focus on local STEP regulations through the periodic update process will help local governments plan for STEP effectively. This ongoing technical assistance will support jurisdictions in adopting zoning and development regulations that anticipate STEP and regulate it in a way that allows for development while protecting public health and safety. However, even with careful planning, siting disputes may still pose barriers to development. Therefore, mediation services will be critical to support local governments and housing providers.

The continuation of STEP not only removes barriers to permitting for barriers but will also ensure that parties involved in permitting and developing STEP projects receive support in resolving disputes collaboratively, in service of developing needed housing. Ongoing funding of the dispute resolution program will facilitate continued STEP development statewide through mediation and technical assistance for jurisdictions. This promises to complement state and local efforts to encourage the development of needed housing in Washington.

The Legislature provided funding for this program on a one-time basis for fiscal year 2025 only. A request for continuing this program is included in Commerce’s 2025-27 budget request, which requested approximately $556,000 each fiscal year and includes ongoing mediation services and two full-time staff positions. This was ultimately not included in the final budget. Moreover, in the 2025 legislative session, legislation in the House and Senate, respectively, proposed to codify STEP and dispute resolution services and continue the program, but neither proposal was enacted.

Appendix A: STEP technical assistance

The following 39 cities and one county submitted code amendments related to STEP for Commerce review. This list is not exhaustive of all jurisdictions that received a formal comment letter on STEP regulations, or other informal suggestions to improve their local codes.

Jurisdictions receiving STEP technical assistance	
Arlington	Milton
Auburn	Monroe
Beaux Arts Village	Moses Lake
Bothell	Mukilteo
Burien	Orting
Colville	Port Townsend
Covington	Poulsbo
DuPont	Redmond
Ellensburg	Sammamish
Enumclaw	SeaTac
Federal Way	Seattle
Fife	Shoreline
Issaquah	Snohomish
Kenmore	Snoqualmie
La Conner	Stanwood
Lakewood	Steilacoom
Liberty Lake	Sumner
Lynnwood	Tacoma
Maple Valley	Tukwila
Mill Creek	Snohomish County