

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1098 (Delegates Rosenberg and Holmes)
Environment and Transportation

Public Housing Authorities - Property Transfers - Rights and Benefits of Tenants

This bill requires the Department of Housing and Community Development's (DHCD) Community Development Administration (CDA) to include, under certain circumstances, specified language in a low-income housing tax credit (LIHTC) covenant.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations. Expenditures are not affected, as enforcement can be handled with existing resources. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local government operations. Expenditures are not affected, as enforcement can be handled with existing resources. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: Upon the approval of an application to CDA for LIHTCs for a property that is owned by a public housing authority and is to be transferred to a receiving entity, CDA must include the following language in the LIHTC covenant: "The owner shall, at a minimum, maintain for tenants the same rights as those provided under Sections 6 and 9 of the United States Housing Act of 1937."

CDA must include additional language in the LIHTC covenant if the property (1) is located in Baltimore City and (2) is in the Rental Assistance Demonstration Program (RAD) to allow the conversion of public housing properties to long-term Section 8 Rental Assistance

Contracts under Public law 112-55 of 2011, as amended by Public Law 113-235(H) of 2014. The covenant must include provisions that:

- require the owner to fully comply with the housing authority of Baltimore City's long-term affordable criteria;
- require the owner to accept, as tenants, only applicants from the public housing transfer waiting list of the housing authority of Baltimore City;
- require the owner to accept without further rescreening all income-eligible residents in good standing on the public housing transfer waiting list of the Housing Authority of Baltimore City; and
- prohibit the owner from electing any tenant preferences.

By including such language in an LIHTC covenant, a cause-of-action will exist against an owner that does not maintain the rights and requirements included in the covenant.

The bill does not limit the rights or remedies that otherwise are available under law to an owner or developer.

Current Law/Background:

U.S. Housing Act of 1937: The United States Housing Act of 1937 provided for subsidies to State and local public housing agencies to provide low-income housing programs. Sections 6 and 9 of the Act addresses certain rights that an owner receiving an LIHTC must maintain for a building's tenants, such as (1) the amount of a tenant's rent payment; (2) procedures for a grievance hearing; and (3) the right to maintain tenant councils/organizations.

Low-income Housing Tax Credit: LIHTC was established by the Tax Reform Act of 1986. The tax credit subsidizes the construction and rehabilitation of low-income rental housing and is intended to encourage the production of low-income residential rental housing. Instead of offering direct subsidies, LIHTC provides incentives by granting investors a dollar-for-dollar reduction in their federal tax liability in exchange for providing funds for the development of qualified, affordable rental housing. This allows rents for some of a project's units to be set below market level while the investors receive annual tax credit allotments over 10 years. For at least 15 years after completion, a project must continue to meet LIHTC eligibility requirements, such as maintaining the units as affordable to the target population.

The federal LIHTC can only be claimed for a qualified project – any project for residential rental property that meets requirements for low-income tenant occupancy, gross rent

restrictions, state credit authority, and Internal Revenue Service certification. A project must continue to meet these requirements for 15 years or the credit is subject to recapture.

DHCD finances multi-family housing developments using the federal LIHTC program and CDA revenue bonds which support the construction and rehabilitation of affordable rental units. LIHTCs are awarded to projects in accordance with the Internal Revenue Code, and developers sell the credits to investors to raise equity for the construction of affordable rental housing. In exchange for the tax credits, developers agree (through an LIHTC covenant) to income and rent restrictions for a minimum of 30 years. Loans for these projects are funded using the proceeds of tax-exempt revenue bonds and/or State appropriations.

Rental Assistance Demonstration: RAD was initially authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55 of 2011, which was amended by Public Law 113-235 of 2014) and is part of the federal government's Department of Housing and Urban Development's (HUD) rental housing preservation strategy. The program allows public housing and moderate rehabilitation properties to convert to long-term Section 8 rental assistance contracts. The goal of the RAD program is to transition public housing to privately owned and privately financed developments with a federal project-based subsidy. The program is designed to facilitate redevelopment of existing public housing using federal low-income housing tax credits, federal tax-exempt bond revenues, and other private and public financing, with HUD then providing long-term federal project-based rental assistance for the units.

Section 8 Housing: HUD's Section 8 Housing Choice Voucher Program is a rental assistance program that subsidizes the rent of lower-income families through the use of federal funds. DHCD administers the program in the State. Under the program, qualified applicants may select the eligible rental housing of their choice.

Additional Comments: Baltimore City advises that it is concerned that the bill impedes the Housing Authority of Baltimore City's ability to work with its development partners, investors, and banks on housing projects. DHCD does not note such a concern.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Comptroller's Office, Department of Housing and Community Development, Maryland Disability Law Center, State Department of Assessments and Taxation, Department of Legislative Services

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md/lgc

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