HB 1090

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1090 (Delegate Stewart)
Environment and Transportation

Department of Housing and Community Development – Partnership Rental Housing Program – Alterations (Mixed–Income Housing Act of 2021)

This bill expands the Partnership Rental Housing Program (PRHP) within the Department of Housing and Community Development (DHCD) to include the creation of "mixed-income housing developments." The bill imposes a $50 surcharge on recordable instruments, with the proceeds transferred to the Partnership Rental Housing Fund. The bill also increases (from 0.5% to 0.75%) the State transfer tax rate on specified property transfers that are greater than $1.5 million in value, with the proceeds in excess of 0.5% transferred to the Partnership Rental Housing Fund. In addition, the bill decreases (from 0.5% to 0.25%) the State transfer tax rate on specified property transfers less than or equal to $150,000 in value. DHCD must begin to accept applications for mixed-income housing development projects no later than July 1, 2022. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Net special fund revenues increase by at least $45.0 million annually beginning in FY 2022 (an *increase* of at least $45.2 million annually for PRHP and a *decrease* of $211,000 annually for the transfer tax special fund). PRHP special fund expenditures increase by at least $45.2 million annually beginning in FY 2022. General fund expenditures increase by $381,300 in FY 2022; future years reflect ongoing costs.

($ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	$45.0	$45.0	$45.0	$45.0	$45.0
GF Expenditure	$0.4	$0.4	$0.4	$0.4	$0.5
SF Expenditure	$45.2	$45.2	$45.2	$45.2	$45.2
Net Effect	($0.6)	($0.6)	($0.6)	($0.7)	($0.7)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Overall, local revenues and expenditures increase significantly due to the expansion of PRHP and the additional funding provided for PRHP, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Partnership Rental Housing Program – Alterations

The findings of the General Assembly and the stated purpose in current law relating to PRHP are expanded to generally address the need for *middle-income* (in addition to lower income) housing supply under the program.

The bill alters one of the qualifications for a household of lower income under PRHP; under the bill, a household qualifies as a household of lower income for initial occupancy if the gross annual income of the household does not exceed 50% of the *area* median income (instead of the *statewide* median income) for a household of like size.

A household qualifies as a household of middle-income under PRHP:

- for initial occupancy, if the gross annual income of the household (1) is greater than 50% but not more than 75% of the area median income for a household of like size or (2) does not exceed a lower income level that the Secretary of Housing and Community Development establishes for a particular partnership project or for a unit of partnership rental housing to be occupied by one or more individuals with disabilities or special needs; and
- for continuing occupancy, if the gross annual income for the household does not exceed the greater of (1) an income level that the Secretary establishes and (2) an applicable federal requirement.

Only a political subdivision or a local housing authority may apply for a loan to develop a mixed-income housing development. For partnership projects undertaken by a political subdivision or housing authority, any maximum financing limits established by DHCD must be at least $150,000 per unit for a "large development" and $4.0 million for a "small development," regardless of the number of units. DHCD and the Community Development Administration (CDA) may not condition the award of a loan from the Partnership Rental Housing Fund on issuance of bonds by the department or CDA.

DHCD must adopt regulations consistent with the bill's provisions relating to mixed-income housing development projects. The regulations must provide for (1) the development of mixed-income housing developments throughout the State; (2) specified occupancy restrictions; and (3) conditions on funding specific to mixed-income housing developments, as specified.

A mixed-income housing development must (1) remain permanently in public ownership; (2) be designed with units that facilitate aging in place; (3) be developed at a high density relative to the county or municipal corporation in which the mixed-income housing development is located; and (4) be located within a reasonable walking distance of high-frequency public transit and quality schools, when available.

In reviewing an application for a loan under these provisions, DHCD must consider:

- the extent to which households of lower and middle-income will be assisted by the proposed development;
- the number and percentage of households of lower and middle-income currently living in the community where the development is proposed;
- the quantity, condition, and affordability of residential property in the community where the development is proposed;
- the economic feasibility of the proposed development;
- the degree of local government incentive and support provided to the proposed development, as specified;
- details of how any contractors or service providers will be selected for the project; and
- any other relevant factors.

In determining whether to award a loan for a mixed-income housing development project, DHCD must deny an application that does not include a requirement that any contractor selected to work on the project pay the prevailing wage rate set for the locality by the Commissioner of Labor and Industry. DHCD must give preference to an application that (1) prioritizes the use of unionized labor, cooperative or worker-owned businesses, and minority-owned businesses; (2) adds to the total available housing stock in a community; (3) maximizes land use, especially in dense urban areas, by repurposing older infrastructure or through innovative land use and development plans; and (4) provides for significant environmental and climate benefits, including construction techniques that promote energy efficiency and recycling.

The definition of "partnership rental housing" in current law is expanded to include mixed-income housing developments. A "mixed-income housing development" means mixed-income rental housing where at least 70% of the units are reserved for households with a gross annual income that does not exceed 75% of the area median income for a household of like size. A "large development" is a partnership project with more than 40 residential units. A "small development" is a partnership project with 40 or fewer residential units.

Recorded Instruments – New Surcharge

In addition to existing fees on recordable instruments, a clerk of the circuit court in each county must collect a $50 surcharge on instruments recorded and distribute the proceeds of the surcharge to the Partnership Rental Housing Fund.

Transfer Tax Rate – Alterations

The bill modifies the transfer tax rate for properties valued at $150,000 or less and properties valued at more than $1.5 million. Under the bill, the transfer tax rate is (1) 0.25% of the consideration payable for the instrument of writing if the consideration is *less than or equal to $150,000*; (2) 0.5% of the consideration payable for the instrument of writing if the consideration is greater than $150,000 but less than or equal to $1.5 million (which is the same as the transfer tax rate under current law); or (3) 0.75% of the consideration payable for the instrument of writing if the consideration is *greater than $1.5 million*.

The State Department of Assessments and Taxation (SDAT) must deduct all transfer tax revenue in excess of 0.5% of the consideration payable for an instrument of writing from the taxes collected pursuant to the increased rate of 0.75% (applicable if the consideration is greater than $1.5 million) and credit those revenues to the Partnership Rental Housing Fund.

Current Law:

Partnership Rental Housing Program

DHCD administers PRHP, which is intended to expand the supply of affordable housing for low-income households. The program provides loans for the development of rental housing that will be occupied by households with incomes at or below 50% of the statewide median. Loan amounts are limited to the greater of $75,000 per unit or the actual cost of the project. Projects financed through the program typically involve a partnership between State and local governments.

Partnership Rental Housing Fund

The Partnership Rental Housing Fund, administered by DHCD, is a special fund established for the purpose of providing deferred payment loans to local governments to construct or rehabilitate rental housing to be occupied by households with incomes of 50% of the statewide median income or less. Repayment is not required as long as the local government continues to own and lease the housing to income eligible households.

The fund consists of:

- money appropriated in the State budget;
- money made available to the fund from the sale of general obligation or other bonds, as specified;
- investment earnings of the fund; and
- repayment of principal or payments of interest on loans from the fund.

Subject to specified conditions, DHCD is authorized to transfer unencumbered money in the fund among the Partnership Rental Housing Fund, the Rental Housing Programs Fund, the Homeownership Programs Fund, and the Special Loan Programs Fund if the Secretary determines that demand is (1) less than anticipated for the fund from which money is being transferred and (2) greater than anticipated for the fund to which money is being transferred.

Recordable Instruments, Generally

The Courts and Judicial Proceedings Article requires the clerk's office of the circuit court in each county and Baltimore City to impose a surcharge on each recordable instrument that is recorded among the jurisdiction's land records or financing statement records. A "recordable instrument" includes any deed, grant, mortgage, deed of trust, lease, assignment, and release that pertains to any interest in property or land, including an interest in rents and profits from rents. The surcharges are deposited in the Circuit Court Real Property Records Improvement Fund.

Before recording an instrument among the land or financing records, a clerk must collect a fee based on the number of pages of the instrument. A clerk may not collect a fee for the recordation generally relating to restrictive covenant modifications, as specified.

Transfer Taxes and Allocation of Transfer Tax Revenue, Generally

Any person or business conveying title to real property by means of an instrument of writing recorded with the clerk of a circuit court (for any county) or filed with SDAT is required to pay the transfer tax. The tax base is the amount of consideration payable for the instrument of writing. The consideration includes the amount of any mortgage or deed of trust assumed by the grantee. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing. However, in the case of a first-time Maryland homebuyer purchasing a principal residence, the transfer tax rate is 0.25% (which is paid by the seller).

Pursuant to statutory requirements, State transfer tax revenues are used to fund several programs in the Department of Natural Resources (DNR) and the Maryland Department of Agriculture (MDA). After specified deductions for the Department of General Services and DNR, the estimated transfer tax revenue available for programs in fiscal 2021 is approximately $205.7 million. The statutory allocations of State transfer tax revenues and the estimated fiscal 2021 allocations to the programs are as follows:

- 75.15% to Program Open Space (POS) within DNR for purposes under the program, including land acquisition ($156.0 million in fiscal 2021);
- 1.0% to POS only for land acquisition ($2.0 million in fiscal 2021);
- 17.05% to the Maryland Agricultural Land Preservation Fund within MDA ($34.1 million in fiscal 2021);
- 5.0% to the Rural Legacy Program within DNR ($10.0 million in fiscal 2021); and
- 1.8% to the Heritage Conservation Fund within DNR ($3.6 million in fiscal 2021).

The POS allocations are subject to further allocation among the State and local components of the program and other purposes. The funds allocated to local governments assist the local governments in acquisition and development of land for recreation and open space purposes. Statute also authorizes a specified portion of the POS allocation to be transferred to the Maryland Heritage Areas Authority within the Maryland Department of Planning.

State Fiscal Effect:

New Surcharge on Recorded Instruments, Altered Transfer Tax Rate, and Loan Awards

Beginning in fiscal 2022, the bill imposes a $50 surcharge on all recorded instruments, a 0.25% transfer tax rate for properties with a value less than or equal to $150,000, and a 0.75% transfer tax for properties with a value greater than $1.5 million. The circuit court clerk must collect the $50 recordation surcharge and distribute it to the Partnership Rental Housing Fund, and SDAT must distribute the transfer tax revenue in excess of 0.5% of the consideration for a property with a value greater than $1.5 million to the fund.

Overall, the bill results in a net increase in special fund revenues of at least $44.9 million annually beginning in fiscal 2022 (an increase of at least $42.3 million annually due to the new surcharge and a net increase of $2.6 million annually due to the bill's changes to the transfer tax rate). The information and assumptions used in developing this estimate, and the distribution of the effects across agencies, are discussed below.

According to the Judiciary, 846,084 instruments were recorded in fiscal 2020. Assuming a comparable number of recorded instruments in future years, the new $50 surcharge yields annual revenues of approximately $42.3 million.

According to data provided by the Maryland Association of Realtors, 31,266 residential properties sold in fiscal 2020 in the State with a value less than or equal to $150,000 (with a median price of $2,700), and 602 residential properties sold with a value greater than $1.5 million (with a median price of $1.9 million). Comparable data on commercial properties, which also pay the transfer tax, subject to specified exemptions, was not available for inclusion in this analysis.

Exhibit 1 shows the revenue differences between the current and proposed transfer tax rates and the estimated revenue loss and gain under the bill, based on fiscal 2020 data.

Exhibit 1
Property Sales, Values, and Transfer Tax Revenues and the Bill's Revenue Effects

Value	Number of Sales	Median Price	Current Transfer Tax	Proposed Transfer Tax	Current Revenue	Proposed Revenue	Difference
$0 to $150,000	31,266	$2,700	0.50%	0.25%	$422,091	$211,045	($211,045)
Greater than $1,500,000	602	$1,900,000	0.50%	0.75%	$5,719,000	$8,578,500	$2,859,500

Note: Based on fiscal 2020 data for residential properties only.

Source: Maryland Association of Realtors; Department of Legislative Services

---

The transfer tax revenue effects described above do not reflect the fact that under current law – and the bill – first-time homebuyers in Maryland only pay 0.25% of the consideration payable for an instrument of writing. Accordingly, the revenue effects described above (and by agency, below) could vary.

Partnership Rental Housing Fund: Special fund revenues to the Partnership Rental Housing Fund within DHCD increase by *at least* $45.2 million annually beginning in fiscal 2022 from the new surcharge and the increased transfer tax rate applicable to transfers valued at more than $1.5 million. The increase in special fund revenues is greater, likely significantly, to the extent that the increase in the transfer tax rate for properties valued at more than $1.5 million generates revenues from the sale of commercial properties, but a reliable estimate of revenues from those properties is not feasible at this time.

Special fund expenditures from PRHP increase commensurately beginning in fiscal 2022. Although the exact timing with which DHCD begins to issue loans for mixed-income housing projects is unknown, this analysis assumes that DHCD spends all of the additional revenue generated under the bill each year for the following reasons:

- although the bill expands PRHP to include mixed-income projects, the program continues to solicit applications and award loans for low-income partnership projects, as authorized under current law;
- DHCD establishes regulations and procedures specific to mixed-income housing development projects during fiscal 2022;
- DHCD begins to award loans for mixed-income housing projects toward the end of fiscal 2022; and
- DHCD uses the additional funding each year to award loans for low-income partnership projects and/or mixed-income housing development projects.

Transfer Tax Special Fund and Associated Programs: Special fund revenues deposited into the transfer tax special fund decrease by an estimated $211,045 annually beginning in fiscal 2022 due to the decrease in the transfer tax rate for properties with a value less than or equal to $150,000. This results in an estimated decrease in special fund revenues for DNR of $175,062 annually and an estimated decrease in special fund revenues to the Maryland Agricultural Land Preservation Fund within MDA of $35,983 annually.

Administrative Expenses

The special fund revenues generated by the bill and distributed to the Partnership Rental Housing Fund are not authorized to cover DHCD's administrative costs. As DHCD must begin accepting applications for mixed-income housing development projects by the beginning of fiscal 2023, this analysis assumes that staff are hired in fiscal 2022 to establish regulations and procedures for such projects.

Therefore, general fund expenditures for DHCD increase by $349,217 in fiscal 2022, which accounts for a 90-day start-up delay from the bill's July 1, 2021 effective date. This estimate reflects the cost of hiring a total of five staff (one program manager, two loan underwriters, one financial analyst, and one administrator) to develop regulations; develop application and award determination procedures; review, audit, and administer loans; and conduct outreach to eligible political subdivisions and housing authorities to determine mixed-income housing financing needs. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	$321,311
Operating Expenses	27,906
FY 2022 DHCD Admin. Expenditures	**$349,217**

Future year administrative expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. In the event that more funding is available than is currently anticipated and, as a result, more staff is needed, DHCD may request additional resources through the annual budget process.

The Judiciary incurs a one-time cost of $32,120 in fiscal 2022 to modify its accounting, revenue collection, and land recordation systems in order to create, process, and disburse the $50 recordation surcharge to the Partnership Rental Housing Fund.

It is assumed that SDAT can implement the bill's changes relating to the transfer tax with existing budgeted resources.

Local Fiscal Effect: Political subdivisions and housing authorities are the only entities that are able to apply for loans for mixed-income housing development projects under the bill. Accordingly, local revenues and expenditures increase significantly as local governments are awarded – and then expend – loans for such projects. In addition, political subdivisions and housing authorities are eligible for loans for low-income partnership projects under the existing PRHP; accordingly, any additional funding provided for those projects as a result of the bill may also benefit local governments.

Local revenues also decrease minimally due to the decrease in available funding for POS, as local governments receive a portion of such funding.

Small Business Effect: Any small businesses involved in the development and construction of low-income partnership projects and mixed-income housing development projects benefit from the significant funding provided for such projects under the bill. Small business farmers may be minimally affected due to the decrease in available funding for the Maryland Agricultural Land Preservation Fund.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Talbot counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Maryland Department of Labor; State Department of Assessments and Taxation; Maryland Association of Realtors; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2021
rh/mcr

Analysis by: Thomas S. Elder

Direct Inquiries to:
(410) 946-5510
(301) 970-5510