

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 819

(Senator A. Washington)

Judicial Proceedings

Real Property - Sale of Apartment Facilities - Rights of Qualified Organizations

This bill establishes procedures for the sale or transfer of specified apartment facilities in the State. Among other provisions, the bill (1) requires an owner of an apartment facility to send specified notice to the Department of Housing and Community Development (DHCD) of an intent to sell; (2) requires DHCD to post such notices on its website and certify and register “qualified organizations”; and (3) establishes a process by which qualified organizations are afforded certain rights regarding specified apartment facilities that are offered for sale. The bill also creates the Right of First Refusal (RFR) Special Fund, administered by DHCD, and requires the Governor to include an appropriation of \$30.0 million for the fund in fiscal 2025. The bill applies prospectively and does not have any effect on contractual rights created prior to the bill’s October 1, 2023 effective date.

Fiscal Summary

State Effect: General fund expenditures increase by \$212,500 in FY 2024 for staff; future years reflect annualization, inflation, and the elimination of a contractual position. General fund expenditures also increase by \$30.0 million in FY 2025 to reflect the mandated appropriation and may further increase in future years to the extent additional funds are provided; special fund revenues correspondingly increase. Special fund expenditures increase beginning in FY 2025 to reflect the awarding of funding. **This bill establishes a mandated appropriation for FY 2025.**

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$0	\$30.0	-	-	-
GF Expenditure	\$0.2	\$30.2	\$0.2	\$0.2	\$0.2
SF Expenditure	\$0	-	-	-	-
Net Effect	(\$0.2)	(-)	(-)	(-)	(-)

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

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Select Definitions

“Apartment facility” means a residential building or complex that contains five or more individual dwelling units offered for rent by a common landlord.

“Eligible nonprofit corporation” means a nonprofit corporation operating in the State established for the purpose of developing, rehabilitating, or operating affordable rental housing.

“Qualified organization” means (1) a housing authority as established under Title 12 of the Housing and Community Development Article; (2) an eligible nonprofit corporation; (3) a legal entity of which the controlling member is a housing authority or an eligible nonprofit organization; or (4) a developer or an operator of a senior apartment facility.

“Senior apartment facility” means an apartment facility that provides housing for older persons as defined under specified federal law. However, a senior apartment facility does not include a nursing home or an assisted living facility.

Applicability

The bill does not apply to the sale or transfer of an apartment facility that is:

- owned by a unit of local, State, or federal government;
- transferred by eminent domain;
- funded, in whole or in part, by a loan or grant provided by a government agency and subject to conditions that restrict occupancy or rents based on the annual earnings, age, or physical abilities of the tenant, provided that the apartment facility is operated under the same conditions after the sale or transfer;
- owned by or associated with a medical or educational institution;

- at least one-half owned by the landlord of the apartment facility if the landlord occupies a dwelling unit in the apartment facility as the landlord's principal place of residence;
- sold or transferred to the owner's spouse, parent, child, sibling, grandparent, or grandchild;
- transferred by the owner into a trust for the benefit of the owner or an individual listed above;
- transferred by a decedent's estate to an individual listed above or a trust established for the benefit of the individual;
- transferred pursuant to a court order or settlement agreement approved by a court; or
- located in a county with a public law or ordinance comparable in subject matter to specific provisions.

Sale and Transfer of Apartment Facilities – General Prohibition

Unless specified requirements are satisfied, an owner of an apartment facility may not (1) offer the apartment facility for sale to a purchaser other than a qualified organization or (2) solicit an offer or accept an unsolicited offer to purchase an apartment facility from a purchaser other than a qualified organization. An owner intending to sell an apartment facility must send a notice meeting specified requirements to DHCD.

Department of Housing and Community Development Responsibilities

DHCD, upon receipt of the notice of intent to sell from an owner, must (1) post the notice on the department's website for 10 business days and (2) provide the owner of the apartment facility with a receipt that indicates the date and time the notice was posted.

DHCD must also operate an electronic system that:

- receives notices as required under the bill;
- certifies and registers qualified organizations;
- allows a user to verify the certification and registration of a qualified organization; and
- notifies qualified organizations registered with DHCD of new notices posted to the website.

DHCD may adopt regulations to carry out these provisions. The bill may not be construed as establishing DHCD as a party or an agent to a party to the sale of an apartment facility.

Qualified Organizations

Qualified organizations that have been certified by and registered with DHCD may, within the 10 days during which the notice is posted, send written notice by certified mail or electronic means to the owner of (or agent for) the apartment facility expressing interest in purchasing the apartment facility. If the owner/agent does not receive any expressions of interest from a qualified organization during this time, the owner may proceed to sell the property without the restrictions established under the bill.

However, if the owner does receive an expression of interest to purchase from a qualified organization, the owner/agent must provide the organization with a disclosure package that contains, at minimum, (1) the requested purchase price or starting bid if one has been established for the apartment facility; (2) the annual expenses associated with operating the apartment facility (including management, insurance, utilities, and regular maintenance costs); and (3) a list of known latent defects of the apartment facility, and, if available, the reserve study.

Within 10 days after receiving the disclosure package, a qualified organization must confirm its interest to the owner by sending written notice, by certified mail or electronic means, to the owner or the agent. If confirmation of interest is not received, the owner may proceed in selling the property. A qualified organization that has confirmed interest must submit a written offer to purchase within 60 days after receiving the disclosure package. If the owner/agent does not receive an offer to purchase within this time period, the owner may proceed with the sale of the property.

An owner may reject an offer submitted by a qualified organization and may reject all offers submitted under the bill and sell the property to any other buyer. However, if the owner intends to accept an offer made by a party other than a qualified organization for less than the price offered by a qualified organization, the owner must (1) notify the qualified organization by certified mail or electronic means of the offer the owner intends to accept and (2) provide the qualified organization with a RFR to purchase the apartment facility under the same terms as proposed in the offer the owner intends to accept.

Following notice from the owner about the offer, the qualified organization must notify the owner or agent within 10 days as to whether the organization intends to accept or reject the terms, as specified. If the owner receives an acceptance from more than one qualified organization, the owner must accept the response that the owner received first. If no acceptance is received from a qualified organization, the owner may accept the offer from a nonqualified organization.

If a qualified organization does not receive notice as required under the bill, the qualified organization may request the appropriate court to issue an injunction in order to compel compliance.

A qualified organization that purchases an apartment facility must allow tenants whose tenancy began before the sale of the apartment facility to continue through the term of the lease but may create new restrictions following the sale.

Right of First Refusal Special Fund

The RFR Special Fund established by the bill is a special, nonlapsing fund that is only to be used to subsidize financing for the acquisition, rehabilitation, and operation of rental properties. Funding priority must be given to counties that have a deficit of at least 10,000 affordable housing units. For fiscal year 2025, the Governor must include in the annual budget an appropriation of \$30.0 million for the RFR special fund.

Miscellaneous

The bill also includes a severability provision.

Current Law: There is no specifically relevant current law in statute.

The federal law specified in the bill defines housing for older persons as housing that is (1) provided under any state or federal program designed and operated to assist elderly persons; (2) intended for, and solely occupied by, persons age 62 or older; or (3) intended for persons age 55 or older (as demonstrated by specified policies and procedures) and that complies with federal rules for occupant age verification.

State Expenditures:

Right of First Refusal Special Fund

General fund expenditures increase by \$30.0 million in fiscal 2025 due to the mandated appropriation under the bill. Special fund revenues for the RFR Special Fund increase correspondingly to reflect receipt of the mandated appropriation; special fund expenditures increase as funding is awarded under the bill. General fund expenditures (and special fund revenues/expenditures) may further increase in future years to the extent that additional funding is provided. Despite the bill's October 1, 2023 effective date, it is assumed that funding is not awarded under the bill until the mandated appropriation is available in fiscal 2025.

Department of Housing and Community Development

DHCD advises that given the creation of the RFR special fund and numerous responsibilities for DHCD created by the bill, including the development and operation of an electronic database, the certification and registration of qualified organizations, and administration of the RFR special fund, it requires additional staff. Specifically, DHCD advises that it requires a contractual network administrator (with a termination date of June 30, 2024), a community program administrator, and an administrative specialist with associated expenditures for DHCD of \$212,488 in fiscal 2024. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses for applicable personnel.

	<u>FY 2024</u>	<u>FY 2025</u>
Positions	3.0	-1.0
Salaries and Fringe Benefits	\$192,729	149,993
Operating Expenses	<u>19,759</u>	<u>2,141</u>
General Fund Expenditures	\$212,488	\$152,134

Future year expenditures reflect full salaries with annual increases, employee turnover, ongoing operating expenses, and the termination of a contractual position.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Small Business Effect: To the extent that qualified organizations under the bill are small businesses, they are afforded special rights regarding the sale of apartment facilities. Small businesses that own and intend to sell specified apartment facilities are subject to enhanced requirements.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 952 of 2021.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Housing and Community Development; Department of Legislative Services

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Analysis by: Donovan A. Ham

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