HB 1149

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1149 (Delegate Stewart, *et al.*)

Environment and Transportation and
Ways and Means

Department of Housing and Community Development - Social Housing Subprogram (Social Housing Act)

This bill establishes a Social Housing Subprogram within the Partnership Rental Housing Program of the Department of Housing and Community Development (DHCD). The bill imposes a $75 surcharge on recordable instruments, with the proceeds transferred to the Partnership Rental Housing Fund. The bill also increases (from 0.5% to 0.85%) the State transfer tax rate on specified property transfers that are greater than $1.0 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 0.4%) the State transfer tax rate on specified property transfers less than $250,000 in value and limits an existing first-time transfer tax homebuyer discount to properties valued at $250,000 or less. The subprogram must be operational and accept applications for social housing projects no later than July 1, 2021. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Special fund revenues increase by $60.7 million annually beginning in FY 2021 due to the recordation surcharge and the increase in the transfer tax rate for specified properties; this does *not* reflect the impact resulting from the bill's other changes to the transfer tax rate or any revenues related to loan repayments or specified fees. Special fund expenditures increase correspondingly. General fund expenditures increase by $451,800 in FY 2021; future years reflect ongoing costs.

($ in millions)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	$60.7	$60.7	$60.7	$60.7	$60.7
GF Expenditure	$0.5	$0.5	$0.5	$0.5	$0.6
SF Expenditure	$60.7	$60.7	$60.7	$60.7	$60.7
Net Effect	($0.5)	($0.5)	($0.5)	($0.5)	($0.6)

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

Local Effect: Local governments and housing authorities are the only entities eligible for loans from the subprogram to construct and operate social housing projects. To the extent that they receive loans, local revenues and expenditures increase commensurately. The bill may also affect funding provided to local governments under Program Open Space (POS).

Small Business Effect: Meaningful.

Analysis

Bill Summary: The definition of a "partnership project" in current law is expanded to include a social housing project. A "social housing project" is specified mixed-income rental housing.

Altered Partnership Rental Housing Program

A "large project" is a partnership project with more than 40 residential units. A "small project" is a partnership project with not more than 40 residential units. For partnership projects undertaken by a political subdivision or housing authority, DHCD must establish maximum financing limits of not less than $75,000 per unit for a large project and $2.0 million for a small project, regardless of the number of units.

Social Housing Subprogram

The stated purposes of the program are to (1) stimulate the construction of social housing; (2) increase and improve the supply of decent, safe, and sanitary social housing at affordable costs, as specified; and (3) support economic growth and activity by financing, in whole or in part, the construction of social housing projects.

DHCD must administer the subprogram, provided that DHCD may act either directly or through the Community Development Administration.

DHCD must set income guidelines for initial and continuing occupancy for households of lower income and households of middle income by considering (1) the median income for the area; (2) the minimum income needed to afford available standard rental units in the area; (3) federal income guidelines, including the requirements of the Federal Low-Income Housing Tax Credit Program; and (4) any other relevant factor.

DHCD must adopt regulations to carry out the subprogram. The regulations must that provide for (1) the development of social housing projects throughout the State; (2) specified occupancy restrictions; (3) applications for money from the fund; (4) charges that must be imposed on subprogram loans; and (5) the recapture of money of the fund from a borrower that does not use the money in a timely manner.

A social housing project must remain permanently in public ownership and may not revert to private or nonprofit ownership under any circumstances. Existing provisions that apply to partnership rental housing projects are expanded to include social housing projects.

Rental units in a social housing project must be available to households of all income levels. A social housing project must include three tiers of rental units, with rental rates calculated as specified in **Exhibit 1**.

Exhibit 1
Rental Rates for Units in a Social Housing Project

Unit Tier	Components of Rental Rate
Tier I	The estimated market rate for the unit. However, a political subdivision or housing authority may include with its application a plan to offer a discount rate less than or equal to 10% for rents in this tier.
Tier II	The unit's share of (1) operating costs for the social housing project and any vacancy loss for the social housing project and (2) the unit's share of repayment costs for any municipal bonds or fund loans used to finance the project or, after any municipal bonds or fund loans have been repaid, a fee of at least 80% but not more than 100% of the amount previously charged.
Tier III	The rental rate for a Tier II unit, minus the difference between the rental rate for a Tier I unit and the rental rate for a Tier II unit.

Source: Department of Legislative Services

Fees collected from Tier II units after any municipal bonds or fund loans have been repaid must be remitted to DHCD and deposited in the Partnership Rental Housing Fund.

Generally, Tier I units must be made available to households of all income levels, Tier II units must be made available to households of middle incomes, and Tier III units must be made available only to households of lower incomes. A social housing project must include (1) a minimum percentage of rental units reserved for seniors; (2) a minimum percentage of one-bedroom rental units reserved for individuals and couples; (3) an equal number of Tier I units and Tier III units; and (4) a number of Tier II units that is less than or equal to the combined number of Tier I units and Tier III units. Rental units restricted for occupancy to meet other federal, State, or local occupancy requirements may be counted toward the minimum requirements.

Other Requirements for Social Housing Projects

Units in a social housing project must be designed to facilitate aging in place. A social housing project in an urban or suburban area must be (1) constructed at a high density relative to the county or municipality in which the social housing unit is located and (2) located within a reasonable walking distance of high-frequency public transit and quality schools, when available in the county or municipality.

Eligible Loan Applicants and Selection

Only a political subdivision or a local housing authority may apply for a subprogram loan. For rental housing financed under the subprogram and owned or managed by a housing authority, the bill supersedes specified subtitles of the Housing and Community Development Article, in addition to all other specified restrictions on tenant income.

A political subdivision or housing authority may contribute local money, including locally administered federal money or federal assistance, to allow for more affordable rents. The contributions of political subdivisions or housing authorities may include the costs of (1) necessary studies, surveys, tests, plans, and specifications; (2) architectural, design, engineering, and other special services; (3) site preparation; (4) indemnity and surety bonds and premiums on title and hazard insurance; and (5) other costs of development.

In reviewing an application for a subprogram loan, DHCD must consider:

- the extent to which households of lower and middle income will be assisted by the proposed project;
- the number and percentage of households of lower and middle income currently living in the community where the project is proposed;
- the quantity, condition, and affordability of residential property in the community where the project is proposed;
- the economic feasibility of the proposed project;
- the degree of local government incentive and support provided to the proposed project, 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 subprogram loan, 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.

In the event the total dollar value of requests under the partnership program, including the social housing subprogram, exceeds the total amount of money available in the fund for awards in a given year, DHCD must give preference to responsive social housing applications.

Subprogram Loans

Money in the Partnership Rental Housing Fund may be used to make loans to an approved applicant to acquire or construct a social housing project or convert an existing nonresidential building or buildings to a social housing project.

A subprogram loan may:

- be for all project costs not required to be paid by the political subdivision or housing authority through monetary or in-kind contributions required by the Partnership Rental Housing Program;
- be secured by a mortgage lien;
- be subordinate to other financing;
- have an interest rate as low as 0%;
- be payable out of surplus cash;
- be a deferred payment loan;
- provide for an equity participation by DHCD or contingent interest payable out of surplus cash or net equity; or
- have any other terms DHCD may require.

To facilitate the repayment of the subprogram loan and achieve the purposes of the subprogram, DHCD may modify the terms of the subprogram loan, as specified.

If a subprogram loan is secured by a mortgage, DHCD may (1) enforce the mortgage; (2) foreclose on the mortgage and take title to the mortgaged property or take deed in lieu of foreclosure; (3) convey title to a purchaser; (4) obtain and enforce a deficiency judgment;

(5) allow assumption of the mortgage; and (6) contract with a private mortgage servicer to perform on behalf of DHCD any functions a servicer ordinarily performs. Without approval or execution by the Board of Public Works, DHCD may assign a mortgage for value or convey property after acquisition.

The bill applies existing penalty provisions applicable to the Partnership Rental Housing Program to the social housing subprogram.

Recorded Instruments – New Surcharge

In addition to existing fees on recordable instruments, a clerk of the circuit court in each county must collect a $75 surcharge on instruments recorded and distribute it to the Partnership Rental Housing Fund.

Transfer Tax Rate – Alterations

Under current law, the transfer tax rate is generally 0.5% of the consideration payable for an instrument of writing; however, for a sale of improved residential real property to a first-time Maryland homebuyer for a principal residence, the rate is 0.25% (which is paid by the seller). The bill modifies the transfer tax rate for properties valued at $250,000 or less and properties valued at more than $1.0 million. Under the bill, the transfer tax rate is (1) 0.4% of the consideration payable for the instrument of writing if the consideration is *less than or equal to $250,000*; (2) 0.5% of the consideration payable for the instrument of writing if the consideration is greater than $250,000 but less than or equal to $1.0 million (which is the same as the current rate); or (3) 0.85% of the consideration payable for the instrument of writing if the consideration is *greater than $1.0 million*.

In addition, the bill limits the application of the existing transfer tax discount for first-time homebuyers. Under the bill, for a sale of improved residential real property to a first-time Maryland homebuyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing (which is paid by the seller), *provided that the consideration payable for the instrument of writing does not exceed $250,000*. Accordingly, the bill eliminates the reduced transfer tax rate for first-time homebuyers with respect to properties valued at more than $250,000.

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 0.85% and credit those revenues to the Partnership Rental Housing Fund.

Current Law/Background:

Partnership Rental Housing Program

DHCD administers the Partnership Rental Housing Program, which is intended to expand the supply of affordable housing for low-income households. The program provides loans for 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 for the purpose of 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 so 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.

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 (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.

Rental Allowance Program

DHCD administers the Rental Allowance Program (RAP) to assist low-income households that are homeless or at risk of being homeless by providing housing assistance payments to (or on behalf of) eligible households. Under the program, the Secretary must establish (1) income limits for eligibility of low-income households that are up to 30% of the State or area median income, whichever is higher and (2) minimum standards for eligible dwelling units. The Secretary must also establish the amount of payments that are made through RAP, taking into account specified factors.

Eligible uses of payments include rent, security deposits, utilities, and other housing-related expenses. DHCD may administer the program by providing monthly housing assistance payments to (or on behalf of) eligible households directly or through political subdivisions, their local housing agencies or departments, or nonprofit organizations. DHCD is authorized to adopt regulations to carry out the program, including timeframes for assistance and other appropriate criteria.

Other Rental Assistance Programs

DHCD is also authorized to establish and administer other rental assistance programs, including programs to assist households that (1) are homeless or at risk of homelessness; (2) include an individual with a disability or special need; (3) have been displaced or impacted by a disaster; or (4) have a critical or emergency housing need. DHCD's other programs are required to be administered in the same way as RAP. DHCD is required to consult with various other State agencies as well as units of local government when appropriate. The Secretary must establish criteria for the programs, including:

- income limits for households;
- timeframes for assistance;
- monthly assistance amounts;
- standards for eligible dwelling units, including types of units, inspection standards, and rent limits;
- eligible uses of assistance payments, which may include security deposits, utilities, and other housing-related expenses; and
- any other criteria the Secretary considers appropriate.

In establishing program criteria, the Secretary may consider factors that include:

- household size and expected average income;
- regional variation throughout the State;
- typical housing costs and expenses;
- relevant standards and definitions established for State and federal housing programs;
- housing needs of eligible households and the expected duration of the housing needs; and
- equitable distribution of funds statewide.

The Secretary is authorized to establish different criteria for different rental assistance programs.

Recordable Instruments, Generally

Pursuant to the Courts and Judicial Proceedings Article, the clerk's office of the circuit court in each county and Baltimore City imposes 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.

Pursuant to the Real Property Article, 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.

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 2020 is approximately $217.0 million. The statutory allocations of State transfer tax revenues and the estimated fiscal 2020 allocations to the programs are as follows:

- 75.15% to POS within DNR for purposes under the program, including land acquisition ($163.0 million in fiscal 2020);
- 1.0% to POS only for land acquisition ($2.0 million in fiscal 2020);
- 17.05% to the Maryland Agricultural Land Preservation Fund within MDA ($37.0 million in fiscal 2020);
- 5.0% to the Rural Legacy Program within DNR ($11.0 million in fiscal 2020); and
- 1.8% to the Heritage Conservation Fund within DNR ($4.0 million in fiscal 2020).

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.

Home Values in Maryland

In calendar 2018, the Maryland Association of Realtors reports that there were 78,762 housing units sold in Maryland. The average home price in the State was $336,868, and the median home price was $293,930.

Social Housing, Generally

Generally, the term social housing is used extensively in Europe to refer to government-owned or regulated affordable housing.

According to the U.S. Department of Housing and Urban Development (HUD), at the federal level, public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. Public housing comes in all sizes and types, from single-family houses to high-rise apartments for elderly families. There are approximately 1.2 million households living in public housing units, managed by some 3,300 local housing agencies (HAs). HUD administers federal aid to HAs that manage the housing for low-income residents at rents they can afford. HUD furnishes technical and professional assistance in planning, developing, and managing these developments.

Eligibility for public housing is determined by income limits developed by HUD. HUD sets the lower income limits at 80%, and very low-income limits at 50%, of the median income for a county or metropolitan area. Income limits vary depending on the area.

State Fiscal Effect:

Altered Transfer Tax Rate and New Surcharge on Recorded Instruments

Beginning in fiscal 2021, the bill imposes a $75 surcharge on all recorded instruments and a 0.85% transfer tax for properties with a value greater than $1.0 million. The circuit court clerk must collect the $75 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 $1.0 million to the fund.

According to data provided by the Maryland Association of Realtors, 1,714 properties sold in fiscal 2019 in the State with a value greater than $1.0 million (with a median price of $1.3 million). According to the Judiciary, at least 705,416 instruments were recorded in fiscal 2019. Therefore, special fund revenues to the Partnership Rental Housing Fund within DHCD increase by an estimated $60.7 million annually beginning fiscal 2021 from the new surcharge and the increased transfer tax rate applicable to specified transfers. Special fund expenditures increase commensurately as DHCD issues and administers loans under the subprogram. In future years, special fund revenues may increase further due to repayments of program loans and any fees from Tier II units, but any such revenues are not reflected in this analysis.

This analysis does not quantify the effect on transfer tax revenues that results from the bill's other changes to the transfer tax provisions. First, the reduction in the transfer tax rate from 0.5% to 0.4% for properties valued at $250,000 or less results in a special fund revenue *decrease* for the agencies that currently receive funding from the transfer tax special fund (primarily DNR and MDA) beginning in fiscal 2021. SDAT was unable to provide information on the total number (and value) of properties that sold in the State during fiscal 2019 with a value of $250,000 or less. Second, the bill's provision that limits the application of the 0.25% transfer tax rate for first-time homebuyers to properties valued at $250,000 or less results in a special fund revenue *increase* for those agencies. Without additional data, the net effect of these offsetting provisions and the associated effects on the programs of the affected agencies cannot be reliably estimated.

Administrative Expenses

The special fund revenues generated under the bill and distributed to the Partnership Rental Housing Fund are not authorized to cover DHCD's administrative costs. As DHCD must have the subprogram operational and begin accepting applications by fiscal 2022, this analysis assumes that staff are hired in fiscal 2021 to establish regulations and procedures for the subprogram.

Therefore, general fund expenditures increase by $419,666 in fiscal 2021 for DHCD to administer the subprogram, which accounts for a 90-day start-up delay from the bill's July 1, 2020 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 promulgate regulations, develop application and determination procedures, review, audit, and administer loans, and conduct outreach to eligible political subdivisions to determine social housing financing needs. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	$392,835
Operating Expenses	26,831
FY 2021 DHCD Admin. Expenditures	**$419,666**

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 for the subprogram than is currently anticipated and 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 2021 to modify its accounting, revenue collection, and land recordation systems in order to create, process, and disburse the $75 recordation surcharge to the Partnership Rental Housing Fund.

The bill's penalty provisions are not anticipated to materially affect State finances.

Small Business Effect: Any small businesses involved in the development and construction of social housing projects benefit from the funding provided for such projects under the bill. To the extent the bill's changes affect the overall level of funding for the Maryland Agricultural Land Preservation Foundation, farmers may be affected.

Additional Information

Prior Introductions: HB 1178 of 2019, a similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

Designated Cross File: SB 1013 (Senator Carter) **-** Rules.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; City of Bowie; Maryland Municipal League; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Housing and Community Development; Department of Natural Resources; Board of Public Works; State Department of Assessments and Taxation; Maryland Association of Realtors; Department of Legislative Services

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