

DATE: February 9, 2021

BILL NO.: Senate Bill 367

COMMITTEE: Senate Committee on Education, Health, and Environmental Affairs

TITLE: Housing and Community Development - Neighborhood Revitalization Programs - Application Requirements

SPONSORS: Sen. McCray

Letter of Information

Description of Bill:

Senate Bill 367 would amend the Housing and Community Development statute to require applications for funding to include a letter of support from the legislative district in which the project is located for (1) Community Legacy, (2) Neighborhood BusinessWorks, and (3) the Baltimore Regional Neighborhood Initiative.

Background:

Current notice and comment requirements for the affected programs are in accordance with U.S. Department of Housing and Urban Development (HUD) rules and are supported by advocates who view the “approval” requirements as potentially discriminatory, by effectively allowing a third party to subvert necessary housing and community development projects.

HUD’s disparate impact rule provides that liability may be established under the Fair Housing Act when a challenged practice actually or predictably results in a disparate impact on a protected class of persons, even if the practice was not motivated by a discriminatory intent. Per *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, this allowance “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”

It has been interpreted that “approval,” such as requiring letters of support or local resolutions, may result in disparate impacts to protected populations, whether through unconscious bias or malintent, and should be avoided. We believe the requirement for a letter of support may constitute a violation of this principle as declining to provide such a letter is effectively a veto of programmatic funding.

In addition to being a violation of the Fair Housing Act, we believe that this may be a violation of prohibitions on legislative veto and the anti-aggrandizement principle, as the character of this action is not legislative in nature, but is adjudicative. See *INS v. Chadha* and *American Fed’n of Gov’t Employees v. Pierce*. This bill would effectively allow an individual legislator or group of legislators, by right of their position in the legislative branch, to be able to individually or collectively subvert executive actions

otherwise permissible under program statutes and to determine the “final disposition of the rights of persons outside the legislative branch.”