

DATE: February 17, 2022

BILL NO.: Senate Bill 46

COMMITTEE: Senate Education, Health, and Environmental Affairs Committee

TITLE: Housing Development and Neighborhood Revitalization Programs – Notice and Application Requirements

SPONSORS: Senator McCray

Letter of Information

Description of Bill:

Senate Bill 46 requires that within 14 days of the approval of projects funded by certain Department-administered programs, the Department of Housing and Community Development notify by email the General Assembly delegation in the district where the project is located. The bill additionally requires applicants to these programs to notify the General Assembly delegation by email and certified mail 30 days prior to submitting their application.

Background:

Senate Bill 46 amends the notice requirements for the federal Low Income Housing Tax Credit (LIHTC), Partnership Rental Housing Program, Community Legacy, Neighborhood Business Works, and the Baltimore Regional Neighborhood Initiative (BRNI). This bill imposes new requirements on both the Department and its applicants, requiring notice to be given by the Department to legislators from the district where the project is located within 14 days of project approval, notice from a potential applicant at least 30 days before an application is submitted.

Currently, for our revitalization and housing programs impacted by this bill, the Department provides a 45 day notice and comment period to local governments after an application has been received and prior to an award being finalized. This was a change from the agency's previous practice of requiring local resolution or approval, as that practice was considered by the U.S. Department of Housing and Urban Development and community advocates to have a potentially discriminatory impact on historically disadvantaged communities.

The Department also makes public a regularly updated list of projects in our Rental Housing Works (RHW) pipeline (<https://dhcd.maryland.gov/HousingDevelopment/Documents/rhw/RHWReport.xlsx>). RHW is a loan that is layered into the financing structure for non-competitive LIHTC projects. These projects constitute the vast majority of rental housing units financed by the agency.

Across most of our programs, we find that the bulk of applications tend to be submitted on or shortly before the application deadline. Imposing a notice requirement to meet program eligibility threshold represents a significant barrier to participation, and would certainly disenfranchise applicants. We believe that the requirement of an applicant to submit notice to officials not involved in the award process would result in a disparate impact to disadvantaged communities and may constitute a violation of civil rights laws, including the Fair Housing Act of 1968.

Further, should the committee choose to adopt a post-application, pre-award notice requirement for the agency, we advise that the 14 day notice to be provided by the agency following receipt of an application is not a reasonable amount of time to process applications, determine what district they may be located in, and turn around letters of notice. The existing local government notice and comment periods do not specify a time frame relative to application, but rather relative to award, which allows administrative flexibility in processing applications, while also preserving a reasonable opportunity for review.