

SENATE No. 01935

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after section 26A of chapter 121B the following section:--

Section 26B.

a. The following words, whenever used in this section, shall, unless a different meaning clearly appears from the context, have the following meanings:--

“Affordable housing”, homeownership or rental housing which is restricted to occupancy by low or moderate income households of 1 or more persons and for which the sale price or rents are affordable as defined by the criteria for inclusion in the department’s subsidized housing inventory or consistent with funding sources.

“Affordable housing development”, a development of new or rehabilitated affordable housing, which may include market-rate housing if such market-rate housing is reasonably necessary for the financial feasibility of construction or operation of the affordable housing.

“Extremely low income household”, a household with a gross income at or less than 30 per cent of area median household income as most recently determined by the U.S. Department of Housing and Urban Development, adjusted for household size.

“Low or moderate income household”, a household with gross income at or less than 80 per cent of area median household income as most recently determined by the U.S. Department of Housing and Urban Development, adjusted for household size.

“Market-rate housing”, homeownership or rental housing which is not restricted to occupancy by low or moderate income households. Market-rate housing may be made available for occupancy by households without regard to income, and it may also include housing subject to maximum income limits to be occupied by households with gross income greater than 80 per cent but not more than 150 per cent of the area median household income as most recently determined by the United States Department of Housing and Urban Development, adjusted for household size.

“Program”, the public housing innovation program under this section.

“Public housing”, state-assisted housing developed through funds provided under chapter 200 of the acts of 1948, chapter 667 of the acts of 1956, chapter 705 of the acts of 1966, chapter 689 of the acts of 1974 and chapter 167 of the acts of 1987.

“Very low income household”, a household with a gross income at or less than 50 per cent but greater than 30 per cent of area median household income as most recently determined by the U.S. Department of Housing and Urban Development, adjusted for household size.

b. (1) A housing authority or regional housing authority may apply to the department for approval to participate in the program. Participation shall be limited to applicants that have the ability to plan and carry out activities under the program, as evidenced by prior performance in the operation and maintenance of public housing, demonstrate a need to redevelop and repair occupied and vacant public housing units, and other appropriate factors as determined by the director of the department.

(2) The department may determine the housing authorities participating in the program, provided that, the total number of authorities may not exceed 10 authorities. In selecting participating authorities, the department shall establish criteria that provides for representation of housing authorities having various characteristics, including both large and small housing authorities, housing authorities serving urban, suburban and rural areas, and housing authorities in various geographical regions throughout the commonwealth.

(3) The department shall require program applicants to describe how tenants shall be provided with independent technical assistance sufficient to allow them meaningful and informed input and shall encourage applications that demonstrate, create, or seek to achieve, with respect to public housing: (i) innovative models for the redevelopment and repair of public housing including for the elderly and frail elderly; (ii) innovative models for improved management; (iii) coordination among several housing authorities; (iv) economic efficiencies; and (v) expansion of economic opportunities for tenants and the commonwealth. Additionally, the department shall encourage applications that achieve the development of affordable housing.

(4) Applications may include less than the applicant's entire portfolio of housing at the applicant's choosing. The department shall act on the application within 90 days of its submission and shall approve applications that meet the criteria established by the director, up to the number established by the department. The department and the participating housing authority shall enter into a program participation agreement summarizing the terms of participation, voluntary withdrawal, and termination for material default and a timetable for achieving objectives of the program. The initial term of participation shall be 7 years, unless the applicant requests a shorter time, which shall be extended in whole or in part by the department so long as: (i) the housing authority has made satisfactory progress toward its goals; (ii) the extension will meet the original objectives of the program; and (iii) the housing authority has not received a negative evaluation pursuant to subsection (n) of this section.

(5) Upon expiration, withdrawal or termination of an agreement, the department shall work cooperatively with the housing authority in a transition process. The transition process may provide for retention of elements of the program implemented during participation including, but not limited to, contractual agreements with third parties that contain terms that extend beyond the term of participation that were referenced in the program participation agreement, approved annual plan or approved annual report.

c. The department, subject to appropriation, shall disburse all funding for a participating housing authority or regional housing authority on a predictable schedule to permit and encourage planning and efficiency by the housing authority.

d. The sections of this chapter which conflict with the powers granted under this section or substantially restrict a housing authority's ability to achieve the goals specified in its application or plan shall not apply to a housing authority or regional housing authority approved by the department to participate in the public housing initiative program to the extent the department determines it is necessary, and except for the provisions in paragraph g of this section.

e. Housing authorities and regional housing authorities participating in the program shall, in addition to those powers conferred in this chapter, have the following powers:

(1) to combine all forms of assistance received from the commonwealth and other sources, including, but not limited to public housing operating subsidies appropriated by the commonwealth through a general appropriations act and public housing modernization funds authorized by the commonwealth to be funded through the sale of general obligation bonds, other funds or grants; provided that, a

housing authority shall not receive diminished assistance by virtue of participation in the program under this chapter;

(2) to establish a reasonable rent policy, which shall be included in the annual plan required by subsection (h), that shall: (A) provide for rents that are affordable to tenants throughout the term of the program; (B) be designed to provide incentives to improved employment and training and self-sufficiency by participating families; (C) include transition and hardship provisions; (D) include in the transition period a limit on rent increases in any 1 year related solely to the change in the rent policy to no more than 10 per cent for the duration of the transition period; (E) provide a rent cap for tenant households at or below 50 per cent of area median income, adjusted for family size, of not more than the maximum tenant rental payments including, if applicable, minimum rents permitted by section 32; and (F) provide a rent cap for elderly and handicapped persons of low income of not more than the maximum tenant rental payments including, if applicable, minimum rents permitted by section 32 and subsection (e) of section 40;

(3) to establish, and include as part of the annual plan required by subsection (h), local methods of tenant or homeowner selection; provided that, the method is fair, objective, public and does not discriminate against any applicant based on any protected category in chapter 151B or any other fair housing laws or department policies and provides admissions preferences for homeless households, veterans and victims of domestic violence;

(4) to create efficient, fair and open procurement policies for supplies, services, and real property, designed to reduce costs and to meet local need, which shall be included in the annual plan required by subsection (h);

(5) To participate in a mixed public/private affordable housing development or create any legal entities or instrumentalities necessary to participate in mixed public private affordable housing development designed to rehabilitate, repair, replace, or develop, affordable housing, including public housing developments and projects developed pursuant to sections 26, 34, and 40 of chapter 121B.

(6) to create partnerships or consortia with other public or private entities for the operation, financing, or development of any program otherwise authorized by law;

(7) to acquire any property to carry out its purposes, and to dispose of any property of the local housing authority without repayment of bonds to the commonwealth notwithstanding any provision of this chapter to the contrary, unless otherwise required by law or contract, provided that the proceeds of any such disposition must be applied to acquisition, operation, development, rehabilitation, or repair of public

or affordable housing consistent with the limitations on use of proceeds in clause (E) of subsection (g); and

(8) to enter into energy services contracts in accordance with section 11C of chapter 25 for a period of up to 20 years.

f. Projects pursuant to this section may include a mix of extremely low income households, low or moderate income households, and market-rate housing, and may utilize any available source of rental subsidy or financial assistance; . provided that operating subsidies appropriated by the legislature and bond funds authorized by the legislature for the benefit of low rent housing projects operated pursuant to sections 32 and 40 of chapter 121B shall not be used to fund capital or operating costs other than those for the redevelopment, repair and operation, including services benefitting the tenants, of such housing.

g. Notwithstanding the provisions of subsection (e), the local housing authority shall:

(1) comply with the provisions of section 12, related to wages, labor requirements, and Social Security;

(2) comply with the provisions of section 29, related to wage rates and collective bargaining;

(3) to retain the same number of public housing units as existed before participation in this program to the greatest extent possible shall; (A) provide for full tenant participation, including public hearing, on adoption or material amendment of its annual plan as required under subsection (h); (B) provide for a tenant lease and grievance procedure substantially similar to that in effect prior to entry into the program under this section; (C) provide that evictions shall be only for good cause; (D) assure that housing assisted under the program in this chapter is decent, safe and sanitary, and that, excepting any market-rate housing, the housing is deed restricted to occupancy by extremely-low, very low, or low and moderate-income households at affordable rents or sales prices, in perpetuity or for such other term as may be approved by the department, consistent with funding sources; and (E) assure that proceeds from the disposition of public housing and funds generated from new affordable and market housing created to replace public housing, unless restricted to a particular use, shall be allocated to the reconstruction, rehabilitation, or repair of public housing developments;

(4) assure that if a participating housing authority redevelops its public housing units, all households residing in the units at the time of planned redevelopment shall receive relocation assistance, if eligible, under this chapter or other applicable statutes. Said households shall have the right to return to the redeveloped

public housing, unless such household is determined to be in unlawful occupancy prior to the approval of the housing authority's application, has materially breached the lease agreement or has been evicted for cause, under applicable law subject to units of the appropriate size and requirements being available. Such households shall have priority for placement over new applicants; and

(5) comply with chapter 334 of the acts of 2006.

h. Each housing authority participating in the program under this section shall prepare an annual plan. Tenants assisted by the housing authority and the wider community shall be provided with adequate notice and opportunities to participate in the development and preparation of the plan. Said tenants shall be provided an opportunity to comment and make recommendations on the plan which shall include not less than 1 public hearing held at a time and location that the participating housing authority reasonably believes will facilitate attendance by, and input from, tenants.

The annual plan shall:

(1) state the housing authority's goals and objectives under the program for its fiscal year;

(2) describe the housing authority's proposed use of assistance for activities under the program for the fiscal year;

(3) describe how the housing authority will achieve the repair and redevelopment of public housing;

(4) state the housing authority's proposed income mix for its housing portfolio of: (A) extremely low income households; (B) very low income households; (C) low or moderate income households; and (D) market rate housing;

(5) explain how the housing authority's proposed activities will meet its goals and objectives;

(6) include appropriate budgets and financial statements; and

(7) describe the tenant participation procedure and what independent technical assistance will be made available to tenants.

Any plan submitted pursuant to subsection (h) shall be deemed approved unless the department, within 60 days of submission, issues a written disapproval. The department shall disapprove the plan if the department reasonably determines, based on information contained in the plan or other reliable information available to the department, that the plan does not comply with the provisions of this section or other

applicable law or cannot reasonably be expected to achieve the purposes set out in this section. The housing authority shall notify tenants of such approval or disapproval.

i. In place of all other planning and reporting requirements of the department, each housing authority participating in the program under this chapter shall submit to the department annually a single annual report, in a form and at a time specified by the department. The annual report shall be the primary means by which the housing authority shall be required to provide information to the department, to tenants and the public on the activities assisted under this section during a fiscal year, unless the department has reason to believe that the housing authority has violated the terms of the program.

Each annual report shall:

(1) document the housing authority's use of assistance under the program, including appropriate financial statements;

(2) describe and analyze the effect of assisted activities in addressing the objectives of this section, including the effect of rent and tenant selection policies;

(3) state the previous year's income mix of residents in the housing authority's public housing and affordable housing developments under this program;

(4) include a certification by the housing authority that it has prepared an annual plan that was prepared in accordance with subsection (h);

(5) describe and document how the housing authority has provided tenants assisted under the program and the wider community with opportunities to participate in the development or material modification of the annual plan, and an opportunity to comment on the annual plan which shall include not less than 1 public hearing;

(6) include a report on the annual incomes of persons served in the previous year; and

(7) include other information as may be required by the department pursuant to subsection (k) to determine the effectiveness of the program.

j. Any report submitted pursuant to subsection (i) shall be deemed approved unless the department, within 60 days of submission, issues a written disapproval because the department reasonably determines, based on information contained in the report or

other reliable information available to the department, that the housing authority is not in compliance with the provisions of this section or other applicable law.

k. Each housing authority shall keep such records as the department may prescribe as reasonably necessary to document the amount of funds and the disposition of funds under this program, to ensure compliance with the requirements of this section, and to measure performance.

l. The department shall have access, for the purpose of audit and examination to any: books; documents; papers; and records that are pertinent to assistance in connection with, and the requirements of, this section; provided however, that reporting shall be conducted solely through the annual report unless the department has reason to believe that the housing authority is not in compliance with its program.

m. The auditor of the commonwealth shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to assistance in connection with, and the requirements of, this section.

n. Each authority shall be evaluated by an independent evaluator twice during the initial term of participation and periodically thereafter, in accordance with standards adopted by the department, to determine the success of initiatives undertaken under this program in achieving the purposes set forth in this section and the housing authority's plan.

o The department shall establish a manner in which to post the housing innovations plan, annual report, independent evaluation and other public records pertaining to each housing authority's public housing innovations program established pursuant to this act so that the progress of each public housing innovations program is publicly available and free to access.

p. The department shall establish a 9 member advisory committee whose members shall include the director of the department or the director's designee, 1 representative selected by Citizens' Housing and Planning Association, 1 representative selected by the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials, 1 representative selected by the Massachusetts Union of Public Housing Tenants, 1 representative selected by the Massachusetts Coalition for the Homeless, and 4 additional members chosen by the director of the department to provide advice and recommendations to the department regarding regulations to implement the provisions of this section and to provide ongoing assistance in determining the effectiveness of the program.

SECTION 2. The department of housing and community development shall adopt regulations implementing the provisions of this act within 90 days of the effective

date of the act. Except for emergency regulations adopted pursuant to section 2 of chapter 30A of the general laws, any such regulation, or any amendment or repeal thereof, shall, after compliance with all applicable provisions of chapter 30A except section 5, be submitted to the general court. The director of the department shall file any proposed regulation, amendment or repeal with the clerk of the house of representatives, together with a statement that the pertinent provisions of said chapter 30A have been complied with and a summary of the regulations in layperson's terms. The clerk shall refer such filing to the joint committee on housing within 5 days of the filing thereof. No such regulation shall take effect until 90 days after it has been so filed; provided, however, that such 90 day period shall not include days when the general court is prohibited by law or rule from meeting in formal session.

The department shall annually report to the house and senate committees on ways and means and the joint committee on housing on the participation of housing authorities in the public housing innovation program.

SECTION 3. No more than 5 housing authorities shall participate in the public housing innovation program created pursuant to section 26(b) of chapter 121B within the first 2 years of enactment of this section. In selecting these participating authorities, the department shall establish criteria that provides for representation of housing authorities having various characteristics, including both large and small housing authorities, housing authorities serving urban, suburban and rural areas, and housing authorities in various geographical regions throughout the commonwealth.

SECTION 4. At least 180 days prior to approving the participation of more than five housing authorities in the public housing innovation program authorized pursuant to section 26B of chapter 121B, the department, with input by the advisory committee, shall submit to the Joint Committee on Housing and the clerks of the House of Representatives and the Senate a report containing a thorough evaluation of the effectiveness of the program as implemented by the previously approved participants over at least a two year period. Such report shall evaluate the success of the previously approved participants in fulfilling the requirements of subsections f and g of said section 26B, the terms of their annual plans as required by subsection h of said section 26B, and in preserving or expanding the number of public housing units as compared to the number that existed prior to participation in the program. Before approving participation of additional housing authorities, the department shall meet with the advisory committee and recommend any changes that would improve the program.