

Chapter 751

(House Bill 90)

AN ACT concerning

State and Local Housing Programs – Affirmatively Furthering Fair Housing

FOR the purpose of requiring the Department of Housing and Community Development to provide a certain report to the General Assembly and the Governor on or before a certain date ~~each year~~ and every 5 years thereafter; requiring the Department and each local jurisdiction to develop and complete jointly a certain template; requiring the Department to administer certain programs to affirmatively further fair housing and prohibiting the Department from taking any action that is materially inconsistent with the obligation to affirmatively further fair housing; requiring the Department to explore ways to ensure it is collaborating with and supporting nonprofit and governmental entities devoted to furthering fair housing; requiring the Department to require ~~certain~~ political subdivisions, and housing authorities, ~~and private entities~~ to affirmatively further fair housing; requiring ~~certain~~ political subdivisions, and housing authorities, ~~and private entities~~ to submit an assessment of fair housing to the Department under certain circumstances; ~~requiring an assessment of fair housing to contain certain information~~; providing that certain requirements do not require or prohibit certain actions; imposing a duty on local jurisdictions to affirmatively further fair housing through certain housing and urban development programs; requiring a comprehensive plan enacted or amended on or after a certain date to include an assessment of fair housing in the comprehensive plan's housing element; requiring the Department of Planning, in consultation with the Department of Housing and Community Development, on request of a local jurisdiction, to provide certain assistance; requiring a local jurisdiction that completed a certain assessment or analysis to incorporate ~~relevant portions of~~ the assessment or analysis into the local jurisdiction's comprehensive plan, by reference, the next time the local jurisdiction amends its comprehensive plan on or after a certain date; defining certain terms; providing for a delayed effective date for certain provisions of this Act; and generally relating to affirmatively furthering fair housing.

BY adding to

Article – Housing and Community Development

Section 2–302; and 2–401 and 2–402 to be under the new subtitle “Subtitle 4.

Affirmatively Furthering Fair Housing”

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Land Use

Section 3–114

Annotated Code of Maryland

(2012 Volume and 2020 Supplement)

Preamble

WHEREAS, The federal Fair Housing Act of 1968 was intended to end housing discrimination and to promote diverse, inclusive communities; and

WHEREAS, Over the past 50 years, most states and local housing programs that receive federal funding from the U.S. Department of Housing and Urban Development have failed to fulfill their obligations to affirmatively further fair housing under the Fair Housing Act because the Act has not been enforced effectively and its intent has not been achieved; and

WHEREAS, Discrimination in housing and concentrated poverty persist in Maryland today; and

WHEREAS, The segregation and institutionalization of people with disabilities persists in part because of barriers to housing in integrated community settings; and

WHEREAS, The General Assembly recognizes that equality, fairness, and opportunity for Maryland residents often require government action and that security, mobility, and economic opportunity are enhanced by the location of a person's home; and

WHEREAS, Segregated neighborhoods of concentrated poverty are often lacking in economic opportunities and experience greater crime, while integrated, mixed-income neighborhoods are more likely to be healthy, thriving communities; and

WHEREAS, This Act seeks to deconcentrate poverty and take proactive steps to combat discrimination and segregation and to increase opportunities for low-income communities; and

WHEREAS, Maryland should ensure that it is implementing and enforcing the abolished federal Affirmatively Furthering Fair Housing regulations within the State as part of the State's duties under the Fair Housing Act because a framework will help local communities receiving federal Housing and Urban Development funds make concrete, data and community member-driven plans to foster thriving communities for everyone, regardless of race, color, religion, national origin, gender, sexual orientation, family status, or disability; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Housing and Community Development

2–302.

(A) ~~(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "ASSISTED PROJECT" HAS THE MEANING STATED IN § 7-101 OF THIS ARTICLE.~~

~~(3) "ASSISTED UNIT" HAS THE MEANING STATED IN § 7-101 OF THIS ARTICLE.~~

~~(4) "MARYLAND ACCESSIBILITY CODE" MEANS THE BUILDING CODE ADOPTED UNDER § 12-202 OF THE PUBLIC SAFETY ARTICLE.~~

~~(B) ON OR BEFORE DECEMBER 1, 2021 2023, AND EACH DECEMBER 1 ON OR BEFORE DECEMBER 1 EVERY 5 YEARS THEREAFTER, THE DEPARTMENT, IN CONSULTATION WITH POLITICAL SUBDIVISIONS AND HOUSING AUTHORITIES, SHALL SUBMIT A REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY ON:~~

~~(1) THE EFFORTS BY THE STATE, POLITICAL SUBDIVISIONS, AND HOUSING AUTHORITIES TO PROMOTE FAIR HOUSING CHOICE AND RACIAL AND ECONOMIC HOUSING INTEGRATION, AND THE RESULTS OF THOSE EFFORTS, DELINEATED BY COUNTY; AND~~

~~(2) ANY ASSESSMENT OF FAIR HOUSING REQUIRED UNDER § 3-114(D)(2) OF THE LAND USE ARTICLE COMPLETED SINCE THE MOST RECENT REPORT REQUIRED UNDER THIS SUBSECTION, INCLUDING ANY ASSESSMENT OF FAIR HOUSING COMPLETED OR REVISED UNDER THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S MOST RECENTLY PUBLISHED AFFIRMATIVELY FURTHERING FAIR HOUSING RULE.~~

~~(1) THE TOTAL NUMBER OF HOUSEHOLDS THAT RECEIVED FINANCIAL ASSISTANCE THROUGH STATE OR LOCAL HOUSING AND RENTAL ASSISTANCE PROGRAMS, DISAGGREGATED BY RACE, DISABILITY STATUS, AND INCOME;~~

~~(2) THE AGGREGATE AMOUNT OF FINANCIAL ASSISTANCE PROVIDED TO HOUSEHOLDS THROUGH STATE AND LOCAL HOUSING AND RENTAL ASSISTANCE PROGRAMS, DISAGGREGATED BY RACE, DISABILITY STATUS, AND INCOME;~~

~~(3) HOUSING ACCESSIBILITY FOR DISABLED RESIDENTS, INCLUDING:~~

~~(i) THE NUMBER OF ASSISTED PROJECTS AND ASSISTED UNITS THAT COMPLY WITH THE DESIGN AND CONSTRUCTION REQUIREMENTS UNDER § 504 OF THE FEDERAL REHABILITATION ACT, THE FEDERAL FAIR HOUSING ACT, AND THE MARYLAND ACCESSIBILITY CODE;~~

~~(II) THE FEATURES OF ASSISTED PROJECTS AND ASSISTED UNITS THAT COMPLY WITH THE DESIGN AND CONSTRUCTION REQUIREMENTS UNDER § 504 OF THE FEDERAL REHABILITATION ACT, THE FEDERAL FAIR HOUSING ACT, AND THE MARYLAND ACCESSIBILITY CODE; AND~~

~~(III) THE SUPPLY AND THE DEMAND IN THE STATE FOR ASSISTED PROJECTS AND ASSISTED UNITS THAT ARE ACCESSIBLE FOR DISABLED RESIDENTS;~~

~~(4) AFFIRMATIVE MARKETING EFFORTS BY THE DEPARTMENT, POLITICAL SUBDIVISIONS, AND HOUSING AUTHORITIES TO SUPPORT PEOPLE OF COLOR AND VOUCHER HOLDERS IN GAINING ACCESS TO ASSISTED HOUSING LOCATED IN HIGHER OPPORTUNITY AREAS; AND~~

~~(5) THE EFFORTS BY POLITICAL SUBDIVISIONS AND HOUSING AUTHORITIES TO PROMOTE FAIR HOUSING CHOICE AND RACIAL AND ECONOMIC HOUSING INTEGRATION, AND THE RESULTS OF THOSE EFFORTS, INCLUDING:~~

~~(i) THE RACIAL COMPOSITION AND DISABILITY STATUS OF THE OCCUPANTS OF AND INDIVIDUALS ON THE WAITING LIST FOR ASSISTED PROJECTS; AND~~

~~(ii) THE RACIAL COMPOSITION OF THE CENSUS TRACT WHERE EACH ASSISTED PROJECT IS LOCATED.~~

~~(C) THE INFORMATION PROVIDED IN THE REPORT REQUIRED UNDER THIS SECTION SHALL BE DISAGGREGATED BY PROJECT, PROGRAM OR SUBSIDY TYPE, AND OCCUPANCY TYPE, INCLUDING GENERAL OCCUPANCY OR RESTRICTED OCCUPANCY.~~

(B) THE REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL PROVIDE AN UPDATE ON THE ACTIONS BEING TAKEN BY LOCAL JURISDICTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING.

(C) THE DEPARTMENT SHALL WORK IN PARTNERSHIP WITH EACH LOCAL JURISDICTION TO JOINTLY DEVELOP AND COMPLETE A TEMPLATE TO CAPTURE DATA IN THE JURISDICTION RELATED TO AFFIRMATIVELY FURTHERING FAIR HOUSING.

SUBTITLE 4. AFFIRMATIVELY FURTHERING FAIR HOUSING.

2-401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “AFFIRMATIVELY FURTHER FAIR HOUSING” MEANS TO TAKE MEANINGFUL ACTIONS, IN ADDITION TO ACTIONS AIMED AT COMBATING DISCRIMINATION, TO:

(I) OVERCOME PATTERNS OF SEGREGATION; AND

(II) FOSTER INCLUSIVE COMMUNITIES FREE FROM BARRIERS THAT RESTRICT ACCESS TO HOUSING AND OPPORTUNITY BASED ON PROTECTED CHARACTERISTICS.

(2) “AFFIRMATIVELY FURTHER FAIR HOUSING” INCLUDES TO TAKE MEANINGFUL ACTIONS THAT, TAKEN TOGETHER:

(I) ADDRESS SIGNIFICANT DISPARITIES IN HOUSING NEEDS AND ACCESS TO OPPORTUNITY;

(II) REPLACE SEGREGATED LIVING PATTERNS WITH TRULY INTEGRATED AND BALANCED LIVING PATTERNS;

(III) TRANSFORM RACIALLY AND ETHNICALLY CONCENTRATED AREAS OF POVERTY INTO AREAS OF OPPORTUNITY; AND

(IV) FOSTER AND MAINTAIN COMPLIANCE WITH CIVIL RIGHTS AND FAIR HOUSING LAWS.

(C) “MEANINGFUL ACTION” MEANS A SIGNIFICANT ACTION THAT IS DESIGNED AND CAN BE REASONABLY EXPECTED TO ACHIEVE A MATERIAL POSITIVE CHANGE BY, FOR EXAMPLE, INCREASING FAIR HOUSING CHOICE OR DECREASING DISPARITIES IN ACCESS TO OPPORTUNITY.

2-402.

(A) THE DEPARTMENT:

(1) SHALL ADMINISTER ITS PROGRAMS AND ACTIVITIES RELATED TO HOUSING AND COMMUNITY DEVELOPMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING; ~~AND~~

(2) SHALL EXPLORE WAYS TO ENSURE IT IS COLLABORATING WITH AND SUPPORTING NONPROFIT AND GOVERNMENTAL ENTITIES DEVOTED TO FURTHERING FAIR HOUSING; AND

~~(3) MAY NOT TAKE ANY ACTION THAT IS MATERIALLY INCONSISTENT WITH THE OBLIGATION TO AFFIRMATIVELY FURTHER FAIR HOUSING.~~

~~(B) (1) THE DEPARTMENT SHALL REQUIRE POLITICAL SUBDIVISIONS, AND HOUSING AUTHORITIES, AND PRIVATE ENTITIES THAT RECEIVE FINANCIAL ASSISTANCE THROUGH THE DEPARTMENT TO AFFIRMATIVELY FURTHER FAIR HOUSING.~~

~~(2) TO ENSURE THAT POLITICAL SUBDIVISIONS, AND HOUSING AUTHORITIES, AND PRIVATE ENTITIES AFFIRMATIVELY FURTHER FAIR HOUSING, THE DEPARTMENT SHALL, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION § 3-114(D)(2) OF THE LAND USE ARTICLE, REQUIRE A POLITICAL SUBDIVISION, OR HOUSING AUTHORITY, OR PRIVATE ENTITY TO SUBMIT AN ASSESSMENT OF FAIR HOUSING TO THE DEPARTMENT BEFORE THE DEPARTMENT MAY PROVIDE FINANCIAL ASSISTANCE TO THE POLITICAL SUBDIVISION, HOUSING AUTHORITY, OR PRIVATE ENTITY FOR HOUSING OR COMMUNITY DEVELOPMENT PURPOSES AS PART OF THE HOUSING ELEMENT OF A COMPREHENSIVE PLAN.~~

~~(C) AN ASSESSMENT OF FAIR HOUSING REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE:~~

~~(1) A SUMMARY OF FAIR HOUSING ISSUES IN THE POLITICAL SUBDIVISION AND AN ASSESSMENT OF THE POLITICAL SUBDIVISION'S POLICIES AND PRACTICES RELATING TO HOUSING AND COMMUNITY DEVELOPMENT, FAIR HOUSING ENFORCEMENT, AND FAIR HOUSING OUTREACH CAPACITY;~~

~~(2) AN ANALYSIS OF AVAILABLE FEDERAL, STATE, AND LOCAL DATA AND KNOWLEDGE TO IDENTIFY INTEGRATION AND SEGREGATION PATTERNS AND TRENDS, RACIALLY OR ETHNICALLY CONCENTRATED AREAS OF POVERTY, DISPARITIES IN ACCESS TO OPPORTUNITY, AND DISPROPORTIONATE HOUSING NEEDS WITHIN THE POLITICAL SUBDIVISION, INCLUDING DISPLACEMENT RISK;~~

~~(3) AN ASSESSMENT OF THE FACTORS THAT CONTRIBUTE TO THE ISSUES AND IMPEDIMENTS IDENTIFIED UNDER ITEM (2) OF THIS SUBSECTION;~~

~~(4) AN IDENTIFICATION OF THE POLITICAL SUBDIVISION'S FAIR HOUSING PRIORITIES AND GOALS, GIVING HIGHEST PRIORITY TO THE FACTORS IDENTIFIED UNDER ITEM (3) OF THIS SUBSECTION THAT LIMIT OR DENY FAIR HOUSING CHOICE OR ACCESS TO OPPORTUNITY, OR NEGATIVELY IMPACT FAIR HOUSING OR CIVIL RIGHTS COMPLIANCE, AND IDENTIFYING THE METRICS AND MILESTONES FOR DETERMINING WHAT FAIR HOUSING RESULTS WILL BE ACHIEVED; AND~~

~~(5) STRATEGIES AND ACTIONS TO IMPLEMENT THE PRIORITIES AND GOALS, INCLUDING:~~

~~(I) ENHANCING MOBILITY STRATEGIES AND ENCOURAGING DEVELOPMENT OF NEW AFFORDABLE HOUSING IN AREAS OF OPPORTUNITY; AND~~

~~(H) ENHANCING PLACE-BASED STRATEGIES AND ENCOURAGING COMMUNITY REVITALIZATION, INCLUDING PRESERVING EXISTING AFFORDABLE HOUSING AND PROTECTING EXISTING RESIDENTS FROM DISPLACEMENT.~~

~~(D)~~ (C) THIS SECTION DOES NOT:

(1) REQUIRE A POLITICAL SUBDIVISION, OR HOUSING AUTHORITY, OR PRIVATE ENTITY TO TAKE A SPECIFIC ACTION TO AFFIRMATIVELY FURTHER FAIR HOUSING; OR

(2) PROHIBIT A POLITICAL SUBDIVISION, OR HOUSING AUTHORITY, OR PRIVATE ENTITY FROM TAKING A SPECIFIC ACTION TO AFFIRMATIVELY FURTHER FAIR HOUSING.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Land Use

3–114.

(a) (1) In this section the following words have the meanings indicated.

(2) “AFFIRMATIVELY FURTHER FAIR HOUSING” HAS THE MEANING STATED IN § 2–401 OF THE HOUSING AND COMMUNITY DEVELOPMENT ARTICLE.

[(2)] (3) “Area median income” has the meaning stated in § 4–1801 of the Housing and Community Development Article.

[(3)] (4) “Low-income housing” means housing that is affordable for a household with an aggregate annual income that is below 60% of the area median income.

[(4)] (5) “Workforce housing” has the meaning stated in § 4–1801 of the Housing and Community Development Article.

(b) A housing element may include goals, objectives, policies, plans, and standards.

(c) A housing element shall address the need for affordable housing within the local jurisdiction, including:

- (1) workforce housing; and
- (2) low-income housing.

(D) (1) LOCAL JURISDICTIONS HAVE A DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING THROUGH THEIR HOUSING AND URBAN DEVELOPMENT PROGRAMS.

(2) THE HOUSING ELEMENT OF A COMPREHENSIVE PLAN THAT IS ENACTED OR AMENDED ON OR AFTER JANUARY 1, ~~2022~~ 2023, SHALL INCLUDE AN ASSESSMENT OF FAIR HOUSING, AS DESCRIBED UNDER ~~§ 2-402 OF THE HOUSING AND COMMUNITY DEVELOPMENT ARTICLE~~, TO ENSURE THAT THE LOCAL JURISDICTION IS AFFIRMATIVELY FURTHERING FAIR HOUSING.

(3) ON REQUEST OF A LOCAL JURISDICTION, THE DEPARTMENT OF PLANNING, IN CONSULTATION WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, SHALL PROVIDE TECHNICAL ASSISTANCE FOR THE PURPOSE OF DEVELOPING THE HOUSING ELEMENT OF THE COMPREHENSIVE PLAN.

~~(3)~~ (4) THIS SUBSECTION DOES NOT REQUIRE A LOCAL JURISDICTION TO TAKE, OR PROHIBIT A LOCAL JURISDICTION FROM TAKING, A SPECIFIC ACTION TO AFFIRMATIVELY FURTHER FAIR HOUSING.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) A local jurisdiction that completed or revised an Assessment of Fair Housing under the federal Department of Housing and Urban Development's most recently published Affirmatively Furthering Fair Housing Rule, ~~published in the Federal Register on July 16, 2015,~~ or an analysis of impediments to fair housing prior to the Affirmatively Furthering Fair Housing Rule, shall incorporate ~~relevant portions of~~ the Assessment of Fair Housing or analysis of impediments into the housing element of the local jurisdiction's comprehensive plan, by reference, as described under § 3-114 of the Land Use Article, the next time the local jurisdiction amends its comprehensive plan.

(b) Subsection (a) of this section applies only to a comprehensive plan that is amended on or after January 1, 2022.

SECTION 4. AND BE IT FURTHER ENACTED, That Sections 2 and 3 of this Act shall take effect January 1, 2022.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4, this Act shall take effect October 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.