

Enrolled
House Bill 2002

Sponsored by Representative KOTEK; Representatives GORSEK, KENY-GUYER, MCLAIN, NOBLE, OLSON, SANCHEZ (Presession filed.)

CHAPTER

AN ACT

Relating to preservation of housing; creating new provisions; amending ORS 456.250, 456.255, 456.260, 456.265, 456.559 and 456.574; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 456.250 is amended to read:

456.250. As used in this section and ORS 456.255 to 456.265:

[(1) "*Federal housing program*" means a federal project-based Section 8 subsidized housing program.]

(1) "Affordability restriction" means a limit on rents that a property owner may charge at a participating property or a limitation on the use of a participating property as set forth in a contract.

(2) "Contract" means a written agreement entered into by a property owner under which a participating property becomes publicly supported housing that is subject to an affordability restriction. "Contract" includes, but is not limited to, a deed restriction, loan agreement, operating agreement or any other written agreement that results in an affordability restriction being placed on the property.

[(2)] **(3) "Local government" means a city, county, public corporation, metropolitan service district or other district, political subdivision or any board, commission or agency thereof.**

[(3)] **(4) "Participating property" means property that is the subject of a contract [between the property owner and the United States Department of Housing and Urban Development for participation in a federal housing program] by which the property becomes publicly supported housing that is subject to an affordability restriction.**

(5)(a) "Publicly supported housing" means a multifamily rental housing development of five or more units that receives or benefits from government assistance under:

(A) A contract for rent assistance from the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Housing and Community Services Department that contains an affordability restriction; or

(B) A contract that is for any other type of government assistance or subsidy that includes an affordability restriction and that is identified in rules adopted by the Housing and Community Services Department.

(b) "Publicly supported housing" does not include a multifamily rental housing development:

(A) For which the development or developer receives only a construction excise tax waiver, a system development charge waiver, a fee waiver or a property tax abatement;

(B) That is part of an inclusionary housing program as defined by local government and authorized under chapter 59, Oregon Laws 2016;

(C) That receives tenant-based federal rent subsidy payments under the Housing Choice Voucher Program authorized by 42 U.S.C. 1437f;

(D) That receives project-based rental assistance administered by a housing authority under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f (o)(13)); or

(E) That receives tenant vouchers from the United States Department of Agriculture under section 542 of the Housing Act of 1949 (42 U.S.C. 1471).

(6) “Qualified purchaser” means a local government entitled to notice under ORS 456.260, the Housing and Community Services Department or a designee appointed by the department under section 6 of this 2017 Act.

SECTION 2. ORS 456.255 is amended to read:

456.255. (1) The Legislative Assembly finds and declares that:

(a) The maintenance of a pool of affordable housing for all citizens is a matter of statewide concern.

(b) The contracts for many **participating** properties in this state that [*participate in federal housing programs*] **are publicly supported housing** are about to expire **or otherwise terminate**. **State and** local governments need an effective process for assessing these expiring **and terminating** contracts and determining whether to assume ownership of the participating properties. The assessment and determination process should ensure appropriate statewide uniformity while maintaining local flexibility. The process should also ensure the rights of property owners and tenants to fair treatment as the contracts expire.

(2) ORS [*456.260 and*] **456.255 to** 456.265 are intended to provide a framework for addressing the withdrawal of participating property from [*federal housing programs*] **publicly supported housing**.

SECTION 3. ORS 456.260 is amended to read:

456.260. (1) [*In establishing a procedure to deal*] **For the purpose of dealing with expiring and terminating** contracts for participating properties, [*a local government may*:]

[*a*] **Require** the owner of a participating property [*to*] **shall**:

[*A*](a) Provide notice **by registered or certified mail, return receipt requested**, [*of the pending contract expiration*] to each local government [*that has requested*] **entitled to notice and the Housing and Community Services Department** [*and each affected tenant one year*] **two years** prior to the date when:

(A) The contract for the property to participate in [*a federal housing program*] **publicly supported housing** will expire **or terminate**; or

(B) **The participating property will be withdrawn from publicly supported housing, whether by sale, transfer, nonrenewal of the contract or otherwise, such that the property will no longer be a participating property.**

[*B*] **Provide notice that the owner intends to withdraw the property from participation in a federal housing program to each local government that has requested notice and each affected tenant up to:**

[*i*] **210 days prior to the expiration of the contract; or**

[*ii*] **150 days prior to the expiration of a one-year extension of the contract, if any.**

[*C*] (b) **Consent to reasonable inspection of the property and inspection of the owner reports on file with the Housing and Community Services Department or the United States Department of Housing and Urban Development, if applicable.**

[*D*] (c) **Maintain the contract for property participation in [*a federal housing program*] publicly supported housing in good standing, if the United States Department of Housing and Urban Development allows that maintenance,** during[:]

[*i*] the notice period[s] referred to under this [*paragraph*] **section**[:]

[*ii*] **Any condemnation proceeding commenced; or**

[*iii*] **Any alternative procedure agreed to under paragraph (c) of this subsection.**

[*E*] (d) **Refrain from taking any action, other than notifying the United States Department of Housing and Urban Development or other party to the contract of the owner’s intention to not**

renew the contract or to withdraw the participating property from publicly supported housing, that would preclude *[the]* a qualified purchaser *[affected local government or its designee]* from succeeding to the contract or negotiating with the owner for the purchase of the property.

(2) A local government is entitled to notice under this section if the participating property is located within the boundaries of the local government.

(3) If the property owner does not comply with the notice requirements under subsection (1) of this section, the property owner shall extend the affordability restriction on the participating property by the number of months that the property owner is in noncompliance with the notice requirements under subsection (1) of this section and immediately provide notice to the Housing and Community Services Department and each local government that is entitled to notice of the extension of the affordability restriction pursuant to this section together with the notice required under subsection (1) of this section.

(4) Subsection (1) of this section does not apply when:

(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;

(b) There is a forced sale of the participating property under a foreclosure; or

(c) The participating property is subject to a deed in lieu of foreclosure.

[(b)] (5) A local government may:

(a) Establish and impose any fine, penalty, tax, fee, charge or assessment upon the owner of participating property for failure to comply with local regulations adopted *[pursuant to paragraph (a) of this subsection]* to implement the provisions of subsection (1) of this section.

[(c) Establish an alternative procedure to condemnation, including but not limited to arbitration, mediation or facilitated negotiation. However, an alternative procedure may not be used unless mutually agreed to by the property owner and the local government.]

[(d)] (b) Require an owner to refrain from disturbing tenancies, other than for cause as defined in the contract, for a period of not more than 180 days after expiration of the contract or withdrawal of the participating property from publicly supported housing if the local government pays, or arranges for payment, to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.

(c) Make application to the Housing and Community Services Department requesting that a local subsidy program be included in the definition of publicly supported housing, as long as the program otherwise complies with and is not excluded from the definition of publicly supported housing.

[(2)] (6) Any notices provided under subsection (1)(a) of this section shall specify whether the owner:

(a) Intends to withdraw the participating property from *[a federal housing program]* publicly supported housing.

(b) Intends to convert the participating property to a nonparticipating use.

(c) Is involved in negotiations with the United States Department of Housing and Urban Development, *[or]* the Housing and Community Services Department or any other individual or entity regarding an extension of an expiring *[participation]* contract.

[(3)] (7) ORS 456.255 to 456.265 do not require the Housing and Community Services Department or a local government to purchase, condemn or otherwise acquire participating property.

(8) The Housing and Community Services Department shall adopt rules to implement the provisions of this section with respect to the duties, powers and functions of the department.

SECTION 4. ORS 456.265 is amended to read:

456.265. (1) Except as expressly authorized in ORS 456.260 *[(1)]* or sections 6 and 7 of this 2017 Act or as may be provided by contract with the property owner, a local government may not:

(a) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for withdrawing the participating property from *[a federal housing program]* publicly supported housing.

(b) Except as an exercise of constitutional or statutory powers of condemnation:

(A) Prevent or restrict a property owner from selling or otherwise disposing of participating property.

(B) Require conveyance of participating property to the local government or to another party.

(C) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for refusing an offer by the **Housing and Community Services Department, the department's designee, a local government or another party to purchase participating property.**

[(c) Require a property owner to pay any replacement fee or other fee for tenant relocation from participating property, except as specified in an alternative procedure being used pursuant to ORS 456.260 (1)(c).]

(2) Subsection (1) of this section does not prohibit a local government that is certified by a federal agency to carry out an agency responsibility or to exercise agency authority from taking any action within the scope of that responsibility or authority.

SECTION 5. Sections 6, 7 and 8 of this 2017 Act are added to and made a part of ORS 456.255 to 456.265.

SECTION 6. (1) Except as provided in subsection (2) of this section, a property owner shall provide notice by registered or certified mail, return receipt requested, to the Housing and Community Services Department and each local government entitled to notice under ORS 456.260, of the opportunity to offer to purchase a participating property at least 13 months prior to the occurrence of any of the following actions if the action will result in withdrawal of the participating property from publicly supported housing:

(a) Refinancing of the primary mortgage;

(b) Recapitalizing for purposes of rehabilitation or repair;

(c) Entering into an agreement to sell the property to a new property owner; or

(d) Withdrawing the participating property from publicly supported housing.

(2) Subsection (1) of this section does not apply when:

(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;

(b) There is a forced sale of the participating property under a foreclosure; or

(c) The participating property is subject to a deed in lieu of foreclosure.

(3)(a) The property owner shall provide the notice required in subsection (1) of this section to afford the qualified purchasers the opportunity to purchase required by this section within the time frames indicated in subsection (5) of this section.

(b) A property owner is under no obligation to accept a qualified purchaser's offer made pursuant to subsection (5) of this section.

(4) The department may appoint a designee to act as purchaser of the participating property and shall give the property owner notice of the appointment of a designee. The department must consult with each local government where the property is located before appointing a designee under this subsection. The department must enter into a written agreement with the appointed designee providing that the designee and any of the designee's successors or assigns:

(a) Agree to preserve the affordability of the participating property; and

(b) Assume all rights and responsibilities attributable to the department as a prospective purchaser of the participating property.

(5) A qualified purchaser may, within 90 days from the date of a property owner's notice under subsection (1) of this section, submit an offer to the property owner to purchase the participating property. Failure by all qualified purchasers to submit a timely offer constitutes an irrevocable waiver of the each qualified purchaser's rights under this section, and, subject to section 7 of this 2017 Act, the property owner may sell the participating property to a third party or withdraw the participating property from publicly supported housing.

(6) If, within 210 days from the date of a property owner's notice under subsection (1) of this section or within such other period of time to which the qualified purchasers and the property owner may agree, the property owner has not accepted any qualified purchaser's

offer to purchase the participating property, each qualified purchaser's offer shall expire, each qualified purchaser's right to purchase the participating property under this section shall terminate and, subject to section 7 of this 2017 Act, the property owner may sell the participating property to a third party or withdraw the participating property from publicly supported housing.

(7) At any time after the notice described in subsection (1) of this section has been provided, a qualified purchaser may request, in writing, that the property owner make available, within 30 days of the request, documents that are relevant to the participating property at the property owner's principal place of business or at a commercial photocopying facility.

(8)(a) Notwithstanding the provisions of ORS 192.410 to 192.505 relating to public records, the documents provided by the property owner to a qualified purchaser under subsection (7) of this section are confidential and exempt from public inspection except with the written consent of the property owner or as ordered by a court.

(b) Notwithstanding paragraph (a) of this subsection, disclosure may be made to potential funding sources, regulatory agencies or agents or consultants of a qualified purchaser in connection with a transaction between the property owner and a qualified purchaser under this section, subject to appropriate confidentiality agreements.

(9) The department shall adopt rules to implement the provisions of this section.

SECTION 7. (1)(a) Within the first 180 days following the expiration of the offer to purchase period described in section 6 (6) of this 2017 Act, a property owner may accept a third party's offer to purchase the participating property. This acceptance shall be made subject to the property owner providing each qualified purchaser the right of first refusal to purchase the property on the same terms and conditions as the third party's offer to purchase, subject to subsection (2) of this section, unless those terms and conditions are modified by mutual consent between the qualified purchaser and the property owner.

(b) The property owner shall provide notice, by registered or certified mail, return receipt requested, to each qualified purchaser of the terms and conditions of the third party's offer to purchase. A qualified purchaser shall have 30 days from the date the notice is mailed to exercise its right of first refusal by submitting a matching offer to purchase the property. The property owner shall accept the first matching offer the property owner receives from a qualified purchaser under this section.

(c) A qualified purchaser's offer is a matching offer if it is on the same terms and conditions as the third party's offer to purchase but for modifications to ensure compliance with subsection (2) of this section, unless those terms and conditions are modified by mutual consent among the qualified purchaser and the property owner.

(2) If a qualified purchaser exercises its right of first refusal, the qualified purchaser and property owner shall execute a purchase agreement on the same terms and conditions as the third party's offer, except that:

(a) The earnest money deposit may not exceed the lesser of two percent of the sales price or \$250,000;

(b) The earnest money deposit must be refundable for at least 90 days; and

(c) Closing shall be scheduled at least 240 days after execution of the purchase agreement.

(3) Subsection (1) of this section does not apply when:

(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;

(b) There is a forced sale of the participating property under a foreclosure;

(c) The participating property is subject to a deed in lieu of foreclosure or a negotiated purchase to avoid foreclosure;

(d) There are more than 30 years remaining before the first scheduled termination of an affordability restriction on the property;

(e) The property owner accepted a third party's offer to purchase the participating property before the effective date of this 2017 Act and has provided documentation of the purchase agreement to the Housing and Community Services Department;

(f) The third party offeror agrees to maintain the affordability restrictions on the participating property, as determined by the department by rule, to ensure that the participating property remains publicly supported housing; or

(g) Any additional situations as determined by the department by rule.

(4) A property owner that sells participating property to a third party shall certify that the owner has complied with all provisions of ORS 456.260, this section and section 6 of this 2017 Act. A certification of compliance under this section shall:

(a) Be recorded in the real property records of the county in which the property is located;

(b) Contain a legal description of the property;

(c) Identify the property owner as the grantor; and

(d) Be acknowledged by the property owner in the manner required for acknowledgment of a deed.

(5) The department shall adopt rules to implement the provisions of this section.

SECTION 8. (1) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the failure of an owner of a participating property to provide notices or otherwise comply with the provisions of ORS 456.260 or sections 6 or 7 of this 2017 Act may bring an individual action in an appropriate court to recover actual damages. The court or the jury may award punitive damages, and the court may provide injunctive relief and any other equitable relief the court considers necessary and proper.

(2) The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section.

SECTION 9. ORS 456.559, as amended by section 6, chapter 61, Oregon Laws 2016, is amended to read:

456.559. (1) The Housing and Community Services Department shall:

(a) Maintain current housing data and information concerning available programs, status of funding, programs planned or undertaken which might conflict with, overlap, duplicate or supersede other planned or existing programs and call these to the attention of appropriate state agencies, governmental bodies and public or private housing sponsors.

(b) Maintain current data from local, state and federal sources concerning publicly supported housing as that term is defined in ORS 456.250, the status of existing affordability restrictions as that term is defined in ORS 456.250 and rental assistance contracts at publicly supported housing.

[(b)] (c) Provide to appropriate state agencies, governmental bodies and public or private housing sponsors such advisory and educational services as will assist them in the development of housing plans and projects.

[(c)] (d) Subject to the approval of the Oregon Housing Stability Council, make noninterest bearing advances, in accordance with ORS 456.710 and the policies of the department, to qualified nonprofit sponsors for development costs of housing projects until mortgage funds are released to repay the advances as provided in ORS 456.710.

[(d)] (e) Advise and assist appropriate state agencies, governmental bodies and public or private housing sponsors, cities and counties, in all programs and activities which are designed or might tend to fulfill the purposes of ORS 456.548 to 456.725 and ORS chapter 458.

[(e)] (f) Encourage and assist in the planning, development, construction, rehabilitation and conservation of dwelling units for persons and families of lower income.

[(f)] (g) Be the central state department to apply for, receive and distribute, on behalf of appropriate state agencies, governmental bodies and public or private housing sponsors in the state, grants, gifts, contributions, loans, credits or assistance from the federal government or any other source for housing programs except when the donor, grantor, or lender of such funds specifically

directs some other agency to administer them. Moneys received under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account.

[(g)] (h) For the purposes of acquiring moneys, credits or other assistance from any agency or instrumentality of the United States or from any public corporation chartered by the United States, comply with any applicable agreements or restrictions for the receipt of such assistance and become a member of any such association or public corporation chartered by the United States.

[(h)] (i) Assist individuals, appropriate state agencies, governmental bodies and public or private housing sponsors through a program which provides housing information, planning, educational services and technical assistance.

[(i)] (j) Comply with the requirements of ORS 443.225 in assisting in the development of any housing for residential care, training or treatment for persons with mental retardation, developmental disabilities or mental or emotional disturbances.

(2) Except as otherwise provided in ORS **456.255 to 456.265 and 456.625** (7) and sections 1 to 3, chapter 61, Oregon Laws 2016, **and sections 6 and 7 of this 2017 Act**, the department may not itself develop, construct, rehabilitate or conserve housing units; and neither the department nor any housing sponsor, including but not limited to any association, corporation, cooperative housing authority or urban renewal agency organized to provide housing and other facilities [*pursuant to*] **under** ORS 456.548 to 456.725, may own, acquire, construct, purchase, lease, operate or maintain utility facilities, including facilities for the generation of electricity, for the distribution of gas and electricity, and for the conveyance of telephone and telegraph messages.

(3) In accordance with the provisions of this section and with the advice of the council, the department shall establish statewide priorities for housing programs. State agencies shall coordinate their housing programs with the department. All state agencies intending to apply for federal funds for use in planning, developing or managing housing, or rendering assistance to governmental bodies or sponsors or individuals involved therein shall submit a description of the proposed activity to the department for review not less than 30 days prior to the intended date of submission of the application to the federal agency. The department shall determine whether the proposal would result in a program that would overlap, duplicate or conflict with any other housing program in the state. If the department finds overlapping or duplication or conflict, it shall recommend modifications in the application. The Oregon Department of Administrative Services shall consider these recommendations in making its decision to approve or disapprove the application. The department shall complete its review and forward its recommendations within 15 working days after receipt of the notification. Failure of the department to complete the review within that time shall constitute approval of the application by the department.

(4) The Director of the Housing and Community Services Department may participate in discussions and deliberations of the council. The director may suggest policies and rules to the council, including those necessary to stimulate and increase the supply of housing for persons and families of lower income.

SECTION 10. ORS 456.574 is amended to read:

456.574. (1) There is created in the General Fund of the State Treasury the Housing and Community Services Department Revolving Account. All moneys deposited in the account are continuously appropriated for the purposes of carrying out the programs which the Housing and Community Services Department is charged with administering subject to limitations otherwise prescribed by law.

(2) The Housing and Community Services Department may transfer to the Housing and Community Services Department Revolving Account amounts not to exceed \$250,000 from funds available to the department. Such funds hereby are continuously appropriated for:

(a) The making of advances under ORS 456.559 **(1)(d)** [(1)(c)] or 456.710; and

(b) The use by the department in the payment of expenses incurred by the department in carrying out ORS 456.548 to 456.725; however, any such funds expended by the department under this paragraph shall be repaid by the department into the revolving account from the fees and charges

collected under ORS 456.625 (3) and from any other moneys available for such repayment in accordance with ORS 456.548 to 456.725.

SECTION 10a. Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter __, Oregon Laws 2017 (Enrolled House Bill 5012), for the biennium beginning July 1, 2017, is increased by \$453,320 for the purpose of implementing sections 6 and 7 of this 2017 Act and ORS 456.260 and 456.559, as amended by sections 3 and 9 of this 2017 Act, except that the funds appropriated by this section may not be used for earnest money deposits or purchase price payments for the purchase of real property.

SECTION 11. (1) Sections 6 and 8 of this 2017 Act and the amendments to ORS 456.250, 456.255, 456.260, 456.265, 456.559 and 456.574 by sections 1 to 4, 9 and 10 of this 2017 Act apply to participating properties that are publicly supported housing on or after the effective date of this 2017 Act and that are subject to contracts executed or renewed prior to, on or after the effective date of this 2017 Act.

(2) Section 7 of this 2017 Act applies to participating properties that are publicly supported housing subject to contracts executed or renewed on or after the effective date of this 2017 Act.

SECTION 12. Sections 6, 7 and 8 of this 2017 Act and the amendments to ORS 456.250, 456.255, 456.260, 456.265, 456.559 and 456.574 by sections 1 to 4, 9 and 10 of this 2017 Act become operative January 1, 2018.

SECTION 13. The Housing and Community Services Department may take any action after the effective date specified in section 14 of this 2017 Act but before the operative date specified in section 12 of this 2017 Act that is necessary for the department to exercise, on and after the operative date specified in section 12 of this 2017 Act, all of the duties, functions and powers conferred on the board by sections 6, 7 and 8 of this 2017 Act and the amendments to ORS 456.250, 456.255, 456.260, 456.265, 456.559 and 456.574 by sections 1 to 4, 9 and 10 of this 2017 Act.

SECTION 14. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House July 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State