

House Bill 2002

Sponsored by Representative KOTEK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands laws regarding preservation of participating properties that are publicly supported housing. Requires two-year notices from property owner of intent to sell participating property to Housing and Community Services Department, local governments and affected tenants. Authorizes department to impose civil penalties for violations.

Requires owner of participating property to provide department and local governments with opportunity to purchase publicly supported housing.

Authorizes civil action by person who suffers ascertainable loss or damage as result of property owner's failure to comply with laws.

A BILL FOR AN ACT

1
2 Relating to preservation of housing; creating new provisions; and amending ORS 456.250, 456.255,
3 456.260, 456.265 and 456.559.

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

5 **SECTION 1.** ORS 456.250 is amended to read:

6 456.250. As used in this section and ORS 456.255 to 456.265:

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

9 [(2)] (1) "Local government" means a city, county, **municipal organization**, public corporation,
10 metropolitan service district or other district, **political subdivision or any board, commission or**
11 **agency thereof**.

12 [(3)] (2) "Participating property" means property that is the subject of a contract [*between the*
13 *property owner and the United States Department of Housing and Urban Development for participation*
14 *in a federal housing program*] **by which the property becomes publicly supported housing**.

15 (3) "**Publicly supported housing**" means a housing unit or development that receives or
16 **benefits from government assistance pursuant to any of the following:**

17 (a) **Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);**

18 (b) **The federal low-income housing tax credit under 26 U.S.C. 42;**

19 (c) **A contract for rent assistance from the United States Department of Housing and**
20 **Urban Development or the United States Department of Agriculture;**

21 (d) **A qualified loan that has been certified by the Housing and Community Services De-**
22 **partment pursuant to a contract with a lending institution that entitles the lending institu-**
23 **tion to the tax credit under ORS 317.097; or**

24 (e) **Any other contract pursuant to which the property owner or the participating prop-**
25 **erty receives a financial incentive or other benefit from the federal, state or local govern-**
26 **ment.**

27 **SECTION 2.** ORS 456.255 is amended to read:

28 456.255. (1) The Legislative Assembly finds and declares that:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

11 **SECTION 3.** ORS 456.260 is amended to read:

12 456.260. (1) In establishing a procedure to deal with expiring contracts for participating prop-
13 erties, **the Housing and Community Services Department shall, and** a local government may,[:]

14 [(a)] require the owner of a participating property to:

15 [(A)] (a) Provide notice of the pending contract expiration to **the department**, each local gov-
16 ernment that has requested notice and each affected tenant [*one year*] **two years** prior to the date
17 when the contract for the property to participate in [*a federal housing program*] **publicly supported**
18 **housing** will expire.

19 [(B)] (b) Provide notice that the owner intends to withdraw the property from participation in
20 [*a federal housing program*] **publicly supported housing to the department**, each local government
21 that has requested notice and each affected tenant up to:

22 [(i)] (A) 210 days prior to the expiration of the contract; or

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

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

27 [(D)] (d) Maintain the contract for property participation in [*a federal housing program*] **publicly**
28 **supported housing** in good standing, if [*the United States Department of Housing and Urban Devel-*
29 *opment allows that maintenance*] **allowed under the terms of the contract or otherwise**, during:

30 [(i)] (A) The notice periods referred to under this [*paragraph*] **section; or**

31 [(ii)] (B) Any condemnation proceeding commenced; or].

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

33 [(E)] *Refrain from taking any action, other than notifying the United States Department of Housing*
34 *and Urban Development of the owner's intention to not renew the contract, that would preclude the*
35 *affected local government or its designee from succeeding to the contract or negotiating with the owner*
36 *for the purchase of the property.*]

37 [(b)] *Establish and impose any fine, penalty, tax, fee, charge or assessment upon the owner of par-*
38 *ticipating property for failure to comply with local regulations adopted pursuant to paragraph (a) of*
39 *this subsection.*]

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

43 [(d)] *Require an owner to refrain from disturbing tenancies, other than for cause as defined in the*
44 *contract, for a period of not more than 180 days after expiration of the contract if the local government*
45 *pays, or arranges for payment, to the owner on the first day of each month, the monthly subsidy that*

1 *the owner was receiving under the contract.]*

2 **(e) Pay any replacement fee or other fee for tenant relocation from a participating**
 3 **property.**

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

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

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

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

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

14 **(4) In addition to any other penalties provided by law and in addition to any other powers**
 15 **of the Housing and Community Services Department, the department may impose a civil**
 16 **penalty for violation of any of the provisions of this section. A civil penalty may not exceed**
 17 **\$10,000 per violation. Civil penalties shall be imposed as provided in ORS 183.745. All penalties**
 18 **recovered shall be paid into the Housing and Community Services Department Revolving**
 19 **Account created under ORS 456.574.**

20 **(5) The department shall adopt rules to implement the provisions of this section with**
 21 **respect to the duties, powers and functions of the department.**

22 **SECTION 4.** ORS 456.265 is amended to read:

23 456.265. (1) Except as expressly authorized in [*ORS 456.260 (1)*] **section 6 of this 2017 Act** or
 24 as may be provided by contract with the property owner, a local government may not:

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

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

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

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

32 (C) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against
 33 a property owner for refusing an offer by the local government or another party to purchase par-
 34 ticipating property.

35 [*c) Require a property owner to pay any replacement fee or other fee for tenant relocation from*
 36 *participating property, except as specified in an alternative procedure being used pursuant to ORS*
 37 *456.260 (1)(c).]*

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

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

43 **SECTION 6.** (1) A property owner shall offer the Housing and Community Services De-
 44 partment or a local government an opportunity to purchase publicly supported housing prior
 45 to entering into an agreement to sell the property to a third party. The property owner shall

1 give the department or local government written notice of the property owner's intention to
 2 sell within such time as is reasonable in order to afford the opportunity to purchase required
 3 by this section within the time frames indicated. A property owner is under no obligation to
 4 enter into an agreement to sell the property to the department or to the local government.

5 (2) The department may appoint a designee to act on the department's behalf as pur-
 6 chaser of the publicly supported housing and shall give the property owner notice of the ap-
 7 pointment of a designee. The department must consult with the local government where the
 8 property is located before appointing a designee under this subsection. The department must
 9 enter into a written agreement with the appointed designee providing that the designee, and
 10 any of the designee's successors or assigns, agrees to preserve the affordability of the pub-
 11 licly supported housing. At any time prior to a sale of the property, the department may
 12 revoke its appointment of designee and assume the designee's rights and responsibilities or
 13 appoint a new designee.

14 (3) The department or the department's designee, or a local government, may, within 90
 15 days after receiving notice pursuant to subsection (1) of this section of the property owner's
 16 intention to sell, submit an offer to the property owner to purchase the publicly supported
 17 housing. Failure by the department or local government to submit a timely offer constitutes
 18 an irrevocable waiver of the department's or local government's rights under this section,
 19 and the property owner may sell the publicly supported housing to a third party.

20 (4) If the department or the department's designee, or a local government, and the
 21 property owner have not entered into an agreement whereby the department or the local
 22 government shall purchase the publicly supported housing within 90 days of submitting an
 23 offer, the offer shall expire, the department's or local government's rights to purchase the
 24 publicly supported housing under this section shall terminate and the property owner may
 25 sell the publicly supported housing to a third party.

26 (5) At any time after the notice described in subsection (1) of this section has been pro-
 27 vided, the department or the department's designee, or the local government, may request,
 28 in writing, that the property owner make available documents that are relevant to the pub-
 29 licly supported housing at the property owner's principal place of business or at a commer-
 30 cial photocopying facility. Documents to be provided under this subsection include, but are
 31 not limited to:

32 (a) Any existing architectural plans and specifications of the publicly supported housing;

33 (b) Itemized lists of monthly operating expenses and capital expenditures in each of the
 34 two preceding calendar years;

35 (c) Any capital needs studies or market studies that have been submitted to a federal,
 36 state or local agency in the preceding two years;

37 (d) Utility consumption rates for the preceding year;

38 (e) Copies of the last two audited annual financial statements and physical inspection
 39 reports filed with federal, state or local agencies;

40 (f) The most recent rent roll showing current vacancies and rent arrearages; and

41 (g) A statement of the approximate annualized vacancy rate for each of the two preced-
 42 ing calendar years.

43 (6)(a) Notwithstanding the provisions of ORS 192.410 to 192.505 relating to public records,
 44 the documents provided by the property owner to the department or the department's
 45 designee, or to a local government, under subsection (5) of this section are confidential and

1 exempt from public inspection except with the written consent of the property owner or as
2 ordered by a court.

3 (b) Notwithstanding paragraph (a) of this subsection, disclosure may be made to potential
4 funding sources, regulatory agencies or agents or consultants of the department or the
5 department's designee, or of the local government, in connection with a transaction between
6 the property owner and the department or the department's designee, or a local government,
7 under this section, subject to appropriate confidentiality agreements.

8 **SECTION 7.** (1) Any person who suffers any ascertainable loss of money or property, real
9 or personal, as a result of the failure of an owner of a participating property to provide no-
10 tices or otherwise comply with the provisions of ORS 456.260 or section 6 of this 2017 Act
11 may bring an individual action in an appropriate court to recover actual damages or statu-
12 tory damages of \$1,000, whichever is greater. The court or the jury may award punitive
13 damages, and the court may provide injunctive relief and any other equitable relief the court
14 considers necessary and proper.

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

17 **SECTION 8.** ORS 456.559, as amended by section 6, chapter 61, Oregon Laws 2016, is amended
18 to read:

19 456.559. (1) The Housing and Community Services Department shall:

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

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

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

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

34 (e) Encourage and assist in the planning, development, construction, rehabilitation and conser-
35 vation of dwelling units for persons and families of lower income.

36 (f) Be the central state department to apply for, receive and distribute, on behalf of appropriate
37 state agencies, governmental bodies and public or private housing sponsors in the state, grants, gifts,
38 contributions, loans, credits or assistance from the federal government or any other source for
39 housing programs except when the donor, grantor, or lender of such funds specifically directs some
40 other agency to administer them. Moneys received under this section shall be deposited with the
41 State Treasurer in an account separate and distinct from the General Fund. Interest earned by the
42 account shall be credited to the account.

43 (g) For the purposes of acquiring moneys, credits or other assistance from any agency or
44 instrumentality of the United States or from any public corporation chartered by the United States,
45 comply with any applicable agreements or restrictions for the receipt of such assistance and become

1 a member of any such association or public corporation chartered by the United States.

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

5 (i) Comply with the requirements of ORS 443.225 in assisting in the development of any housing
6 for residential care, training or treatment for persons with mental retardation, developmental disa-
7 bilities or mental or emotional disturbances.

8 (2) Except as otherwise provided in ORS **456.255 to 456.265 and** 456.625 (7) and sections 1 to
9 3, chapter 61, Oregon Laws 2016, **and section 6 of this 2017 Act**, the department may not itself
10 develop, construct, rehabilitate or conserve housing units; and neither the department nor any
11 housing sponsor, including but not limited to any association, corporation, cooperative housing au-
12 thority or urban renewal agency organized to provide housing and other facilities pursuant to ORS
13 456.548 to 456.725, may own, acquire, construct, purchase, lease, operate or maintain utility facili-
14 ties, including facilities for the generation of electricity, for the distribution of gas and electricity,
15 and for the conveyance of telephone and telegraph messages.

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

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

34 **SECTION 9. (1) Sections 6 and 7 of this 2017 Act and the amendments to ORS 456.250,**
35 **456.255, 456.260, 456.265 and 456.559 by sections 1 to 4 and 8 of this 2017 Act apply to partic-**
36 **ipating properties that are or become publicly supported housing on or after the effective**
37 **date of this 2017 Act.**

38 **(2) Sections 6 and 7 of this 2017 Act and the amendments to ORS 456.250, 456.255, 456.260,**
39 **456.265 and 456.559 by sections 1 to 4 and 8 of this 2017 Act do not affect a contract regarding**
40 **participating properties made before the effective date of this 2017 Act. However, sections 6**
41 **and 7 of this 2017 Act and the amendments to ORS 456.250, 456.255, 456.260, 456.265 and**
42 **456.559 by sections 1 to 4 and 8 of this 2017 Act apply to a renewal or extension of an existing**
43 **contract regarding participating properties on or after the effective date of this 2017 Act as**
44 **well as to a new contract regarding participating properties made on or after the effective**
45 **date of this 2017 Act.**

