

SENATE No. 2308

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to public housing innovation program.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

3 Section 26B.

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

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

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

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

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

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

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

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

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

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

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

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

53 (4) Applications may include less than the applicant's entire portfolio of housing at the
54 applicant's choosing. The department shall act on the application within 90 days of its

55 submission and shall approve applications that meet the criteria established by the director, up to
56 the number established by the department. The department and the participating housing
57 authority shall enter into a program participation agreement summarizing the terms of
58 participation, voluntary withdrawal, and termination for material default and a timetable for
59 achieving objectives of the program. The initial term of participation shall be 7 years, unless the
60 applicant requests a shorter time, which shall be extended in whole or in part by the department
61 so long as: (i) the housing authority has made satisfactory progress toward its goals; (ii) the
62 extension will meet the original objectives of the program; and (iii) the housing authority has not
63 received a negative evaluation pursuant to subsection (n) of this section.

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

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

73 d. The sections of this chapter which conflict with the powers granted under this section
74 or substantially restrict a housing authority's ability to achieve the goals specified in its
75 application or plan shall not apply to a housing authority or regional housing authority

76 approved by the department to participate in the public housing initiative program to the
77 extent

78 the department determines it is necessary, and except for the provisions in paragraph g of
79 this
80 section.

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

83 (1) to combine all forms of assistance received from the commonwealth and other
84 sources, including, but not limited to public housing operating subsidies appropriated by the
85 commonwealth through a general appropriations act and public housing modernization funds
86 authorized by the commonwealth to be funded through the sale of general obligation bonds,
87 other funds or grants; provided that, a housing authority shall not receive diminished assistance
88 by virtue of participation in the program under this chapter;

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

98 elderly and handicapped persons of low income of not more than the maximum tenant rental
99 payments including, if applicable, minimum rents permitted by section 32 and subsection (e) of
100 section 40;

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

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

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

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

116 (7) to acquire any property to carry out its purposes, and to dispose of any property of the
117 local housing authority without repayment of bonds to the commonwealth notwithstanding any

118 provision of this chapter to the contrary, unless otherwise required by law or contract, provided
119 that the proceeds of any such disposition must be applied to acquisition, operation, development,
120 rehabilitation, or repair of public or affordable housing consistent with the limitations on use of
121 proceeds in clause (E) of subsection (g); and

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

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

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

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

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

136 (3) to retain the same number of public housing units as existed before participation in
137 this program to the greatest extent possible shall; (A) provide for full tenant participation,
138 including public hearing, on adoption or material amendment of its annual plan as required under

139 subsection (h); (B) provide for a tenant lease and grievance procedure substantially similar to
140 that in effect prior to entry into the program under this section; (C) provide that evictions shall be
141 only for good cause; (D) assure that housing assisted under the program in this chapter is decent,
142 safe and sanitary, and that, excepting any market-rate housing, the housing is deed restricted to
143 occupancy by extremely-low, very low, or low and moderate-income households at affordable
144 rents or sales prices, in perpetuity or for such other term as may be approved by the department,
145 consistent with funding sources; and (E) assure that proceeds from the disposition of public
146 housing and funds generated from new affordable and market housing created to replace public
147 housing, unless restricted to a particular use, shall be allocated to the reconstruction,
148 rehabilitation, or repair of public housing developments;

149 (4) assure that if a participating housing authority redevelops its public housing units, all
150 households residing in the units at the time of planned redevelopment shall receive
151 relocation assistance, if eligible, under this chapter or other applicable statutes. Said
152 households shall have the right to return to the redeveloped public housing, unless such
153 household is determined to be in unlawful occupancy prior to the approval of the housing
154 authority's application, has materially breached the lease agreement or has been evicted
155 for cause, under applicable law subject to units of the appropriate size and requirements
156 being available. Such households shall have priority for placement over new applicants;
157 and

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

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

166 The annual plan shall:

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

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

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

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

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

177 (6) include appropriate budgets and financial statements; and

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

180 Any plan submitted pursuant to subsection (h) shall be deemed approved unless the
181 department, within 60 days of submission, issues a written disapproval. The department shall
182 disapprove the plan if the department reasonably determines, based on information contained in
183 the plan or other reliable information available to the department, that the plan does not comply
184 with the provisions of this section or other applicable law or cannot reasonably be expected to
185 achieve the purposes set out in this section. The housing authority shall notify tenants of such
186 approval or disapproval.

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

194 Each annual report shall:

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

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

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

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

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

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

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

210 j. Any report submitted pursuant to subsection (i) shall be deemed approved unless the
211 department, within 60 days of submission, issues a written disapproval because the department
212 reasonably determines, based on information contained in the report or other reliable information
213 available to the department, that the housing authority is not in compliance with the provisions of
214 this section or other applicable law.

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

219 l. The department shall have access, for the purpose of audit and examination to any:
220 books; documents; papers; and records that are pertinent to assistance in connection with, and the
221 requirements of, this section; provided however, that reporting shall be conducted solely through

222 the annual report unless the department has reason to believe that the housing authority is not in
223 compliance with its program.

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

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

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

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

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

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

259 SECTION 3. No more than 5 housing authorities shall participate in the public housing
260 innovation program created pursuant to section 26(b) of chapter 121B within the first 2 years of
261 enactment of this section.

262 SECTION 4. At least 180 days prior to approving the participation of more than five
263 housing authorities in the public housing innovation program authorized pursuant to section 26B
264 of chapter 121B, the department, with input by the advisory committee, shall submit to the Joint

265 Committee on Housing and the clerks of the House of Representatives and the Senate a
266 report
267 containing a thorough evaluation of the effectiveness of the program as implemented by
268 the
269 previously approved participants over at least a two year period. Such report shall
270 evaluate the
271 success of the previously approved participants in fulfilling the requirements of
272 subsections f
273 and g of said section 26B, the terms of their annual plans as required by subsection h of
274 said
275 section 26B, and in preserving or expanding the number of public housing units as
276 compared
277 to the number that existed prior to participation in the program.