

SENATE No. 624

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to public housing reform..

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 are hereby amended by inserting after section 26A of
2 chapter 121B the following new section:--

3 Section 26B. Public Housing Innovation Program Powers.

4 a. It is the purpose of this section to authorize, on a demonstration basis, the creative and
5 efficient use of all forms of financial assistance from the Commonwealth to public housing
6 authorities that operate state-assisted public housing developments to enable redevelopment and
7 repair of existing state-assisted public housing developments, the redeveloped and repaired
8 developments intended to serve primarily extremely low-income households, expansion and
9 development of housing opportunities for elderly persons of low income, families of low income,
10 and handicapped persons of low income, enhance opportunities for training, work, and education
11 of public housing residents, and enhance the ability of elderly persons of low income and
12 handicapped persons of low income to live independently.

b. 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 one or more persons and for which the sales prices 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.

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

“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.

c. A housing authority or regional housing authority may apply to the department for approval to participate in the public housing innovation program. Participation shall be limited to applicants that have the ability to plan and carry out activities under this program, as evidenced by prior performance in the operation and maintenance of public housing, need to redevelop and repair occupied and vacant public housing units, and other appropriate factors as determined by the director of the department; provided, that the department may determine the total number of authorities, not to exceed ten, participating in this demonstration program. The department shall require applicants to describe how residents will be provided with independent technical assistance and shall encourage applications that demonstrate, create, or seek to achieve: innovative models for the redevelopment and repair of public housing including for the elderly and frail elderly, development of affordable housing, improved management, coordination among several housing authorities, economic efficiencies, and expansion of economic opportunities for residents and for the Commonwealth. Applications may include less than the applicant’s entire portfolio at the applicant’s choosing. The department shall act on said application within 90 days of submission thereof 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 an 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 seven years, unless the applicant requests a shorter time, which shall be extended in whole or in part by the department so long as the housing authority has made satisfactory progress toward its goals, the extension will meet the original objectives of the program, and the housing authority has not received a negative evaluation pursuant to paragraph 1 of this section. Upon expiration or earlier termination of an agreement the department shall work cooperatively with the housing authority in a transition process, which 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 demonstration program participation agreement or approved annual report.

d. The department 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.

e. To the extent necessary, and except for the provisions in paragraph g of this section, 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.

f. Housing authorities and regional housing authorities participating in the public housing innovation program, in addition to those powers conferred in chapter 121B, shall have the following powers:

i. To combine all forms of assistance received from the Commonwealth and other sources, including, but not limited to, operating subsidy, modernization funds, and other funds or grants, such funds to be utilized for the operation, redevelopment, and repair of public housing, affordable housing, and other purposes as authorized by this section, provided that a housing authority shall not receive diminished assistance by virtue of participation in the program under this chapter.

ii. To establish a reasonable rent policy, which shall be included in the annual plan required by paragraph h, that shall (a) be designed to provide incentives to improved employment and training and self-sufficiency by participating families, (b) include transition and hardship provisions, (c) include in the transition period a limit on rent increases in any one year related solely to the change in the rent policy to no more than 10 per cent for the duration of the transition period, (d) 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 (e) 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 section 40(e).

iii. To establish, and include as part of the annual plan required by paragraph 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 and provides admissions preferences for homeless households, veterans, and victims of domestic violence.

iv. 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 paragraph h.

v. To participate in mixed public/private affordable housing developments 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, and to create any legal entities or instrumentalities necessary to accomplish these purposes. Projects pursuant to this section may include a mix of extremely low, low, moderate, and market rate units, and may utilize any available source of rental subsidy or financial assistance.

vi. To create partnerships or consortia with other public or private entities for the operation, financing, or development of any program otherwise authorized by law.

vii. 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 chapter 121B 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.

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

g. Notwithstanding the provisions of paragraph f of this section, the local housing authority shall:

- 121 i. comply with the provisions of section 12 of chapter 121B, related to wages, labor
122 requirements, and Social Security;
- 123 ii. comply with the provisions of section 29 of chapter 121B, related to wage rates and
124 collective bargaining;
- 125 iii. to the extent possible, retain the same number of public housing units as existed
126 before participation in this program;
- 127 iv. provide for full tenant participation, including public hearing, on adoption or material
128 amendment of its annual plan as required under paragraph h;
- 129 v. provide for a tenant lease and grievance procedure substantially similar to that in effect
130 prior to entry into the program under this section;
- 131 vi. provide that evictions shall be only for good cause;
- 132 vii. assure that housing assisted under the program in this chapter is decent, safe and
133 sanitary, and that, excepting any market-rate housing, the housing is deed restricted to occupancy
134 by extremely-low, very low, or low and moderate-income households at affordable rents or sales
135 prices, in perpetuity or for such other term as may be approved by the department, consistent
136 with funding sources;
- 137 viii. assure that proceeds from the disposition of public housing and funds generated from
138 new affordable housing created to replace public housing, unless restricted to a particular use,
139 shall be allocated to the reconstruction, rehabilitation, or repair of public housing developments;
- 140 ix. assure that if a participating housing authority redevelops its public housing units, all
141 households residing in the units at the time of planned redevelopment shall receive relocation

assistance, if eligible, under this chapter or other applicable statutes, and shall have the right to return to the redeveloped public housing, subject to remaining in good standing and subject to units of the appropriate size and requirements being available. Such households shall have priority for placement over new applicants; and

x. 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, after providing residents assisted by the housing authority and the wider community with adequate notice and opportunities to participate in the development of the plan, and an opportunity to comment and make recommendations on the plan which shall include not less than one public hearing held at a time and location that the participating housing authority reasonably believes will facilitate attendance by and input from residents. The annual plan shall:

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

ii. describe the housing authority's proposed use of assistance for activities under the program for the fiscal year;

iii. describe how the housing authority will achieve the repair or redevelopment or both of public housing;

iv. state the housing authority's proposed income mix, extremely low, very low, low, moderate, and market, for its portfolio;

v. explain how the housing authority's proposed activities will meet its goals and objectives;

vi. include appropriate budgets and financial statements; and

vii. describe the resident participation procedure and what independent technical assistance will be made available to residents.

Any plan submitted pursuant to paragraph h shall be deemed approved unless the department, within 45 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.

i. In place of all other planning and reporting requirements, 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 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:

i. document the housing authority's use of assistance under the program, including appropriate financial statements;

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

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

iv. include a certification by the housing authority that it has prepared an annual plan that was prepared in accordance with paragraph h;

v. describe and document how the housing authority has provided residents assisted under the program and the wider community with opportunities to participate in the development of the annual plan, and an opportunity to comment on the annual plan which shall include not less than one public hearing;

vi. include a report on the annual incomes of persons served in the previous year; and

vii. include other information as may be required by the department pursuant to paragraph k to determine the effectiveness of the program.

j. Any report submitted pursuant to paragraph i shall be deemed approved unless the department, within 45 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 amounts and the disposition of amounts under this program, to ensure compliance with the requirements of this section, and to measure performance.

ii. 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 such access shall be obtained solely

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

iii. The Auditor of the Commonwealth, or any of the duly authorized representatives of the Inspector General, 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.

1. 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.

SECTION 2. The department of housing and community development shall establish a nine member advisory committee whose members shall include the director of the department or his designee, one representative selected by Citizens' Housing and Planning Association, one representative selected by the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials, one representative selected by the Massachusetts Union of Public Housing Tenants, one representative selected by the Massachusetts Coalition for the Homeless, and four additional members chosen by the director to provide advice and recommendations to the department regarding regulations to implement the provisions of this act and to provide ongoing assistance in determining the effectiveness of the public housing innovation program, and the department shall adopt regulations implementing the provisions of this act within ninety days of the effective date of the act, and 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

226 housing authorities in the public housing innovation program. Participation in the advisory
227 committee, or actions taken on behalf of the committee, or actions in relation to transactions
228 between the committee, or actions in relation to transactions between the committee and other
229 public or private entities represented on the committee, by any individual otherwise subject to
230 chapter 268A of the General Laws, shall not be deemed to violate the provisions of chapter
231 268A.