

Enrolled
House Bill 3778

Sponsored by Representative MERKLEY; Representatives CARLSON, MORRISETTE (at the request of Housing and Community Services Department)

CHAPTER

AN ACT

Relating to Housing and Community Services Department; creating new provisions; and amending ORS 456.578, 456.615, 456.620 and 456.625.

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

SECTION 1. The Legislative Assembly finds and declares that the primary purpose of financing by the Housing and Community Services Department is to provide affordable housing for persons and families of lower income or very low income.

SECTION 2. ORS 456.615 is amended to read:

456.615. As used in ORS 456.550 to 456.725, unless the context requires otherwise:

(1) "Bonds" means any bonds, notes or other evidence of indebtedness, including notes or other evidence of indebtedness issued in anticipation of the issuance of bonds and payable from the proceeds of bonds issued, issued under ORS 456.515 to 456.725.

(2) "Capital reserve account" or "capital reserve accounts" means one or more of the special trust accounts [*which*] **that** may be established by the Housing and Community Services Department within the Housing Finance Fund.

(3) "Housing finance bond declaration" means a written instrument signed by the director of the Housing and Community Services Department and on file with and bearing the certificate of approval of the State Treasurer, and all housing finance bond declarations supplemental thereto.

(4) "Consumer housing cooperative" means a cooperative corporation formed under ORS chapter 62 and whose articles of incorporation provide, in addition to the other requirements of ORS chapter 62, that:

(a) The consumer housing cooperative has been organized exclusively to provide housing facilities for persons and families of lower income and such social, recreational, commercial and communal facilities as may be incidental to such housing facilities.

(b) All income and earnings of the consumer housing cooperative shall be used exclusively for consumer housing cooperative purposes and that no unreasonable part of the net income or net earnings of the cooperative shall inure to the benefit or profit of any private individual, firm, corporation, partnership or association.

(c) The consumer housing cooperative is in no manner controlled or under the direction of or acting in the substantial interest of any private individual, firm, corporation, partnership or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any transaction therewith, except that such limitation shall apply to the members of the cooperative only to the extent provided by rules of the department.

(d) The operations of the consumer housing cooperative may be supervised by the department and that the consumer housing cooperative shall enter into such agreements with the department as the department may require to provide regulation by the department of the planning, development and management of any housing project undertaken by the cooperative and the disposition of the property and other interests of the cooperative.

(5) "Development costs" means the costs that have been approved by the department as appropriate expenditures and includes, but is not limited to payments for options to purchase property for the proposed housing project site, deposits on contracts of purchase, payments for the purchase of property as approved by the department, legal, organizational and marketing expenses including payment of attorney fees, managerial and clerical staff salaries, office rent and other incidental expenses, payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work; expenses for surveys as to need and market analyses; and such other expenses incurred by the qualified housing sponsor as the department may deem necessary under ORS 456.550 to 456.725.

(6) "Elderly" means a person or a family whose head of the household is 58 years of age or older, residing in the state, whose income is below the level [*which*] **that** the department has determined to be necessary in order to obtain in the open market decent, safe and sanitary housing, including the costs of utilities and taxes, for 25 percent of the gross income of the household[, *as provided in ORS 456.620 (4)*].

(7) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an agency or instrumentality thereof.

(8) "Housing development" means a development that [*primarily*] contains housing units for persons or families of lower income and such other incidental elements of **residential**, commercial, recreational, industrial, communal or educational facilities as the department determines improve the quality of the development as it relates to housing for persons or families of lower income and the financial feasibility of the development. Not more than 50 percent of the total amount of any financing provided by the department for a particular development [*shall*] **may** be used to finance commercial, recreational, industrial, communal or educational facilities. Profits from incidental elements shall be applied to loans due under ORS 456.550 to 456.725.

(9) "Housing Finance Fund" means the Housing Finance Fund established in ORS 456.720 (1).

(10) "Lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit unit maintaining an office in this state, or any insurance company authorized to do business in this state.

(11) "Limited dividend housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted as to distribution of income and shall be regulated as to rents, charges, rate of return and methods of operation as the department determines necessary to carry out the purposes of ORS 456.550 to 456.725.

(12) "Lower income families or persons" means the elderly and families and persons, residing in this state, whose income is below the level [*which*] **that** the department has determined to be necessary in order to obtain in the open market decent, safe and sanitary housing, including the costs of utilities and taxes, for 25 percent of the gross income of such family or person[, *as provided under ORS 456.620 (4)*]. The term may also include other families or persons where the assistance provided is determined by the director to be incidental to the accomplishment of the department's programs for lower income families or persons. The department, in cooperation with affected local governments, shall determine what constitutes "decent, safe and sanitary housing."

(13) "Manufactured housing" means a dwelling unit manufactured off-site having a minimum width of 10 feet and a minimum area of 400 square feet built on a permanent chassis and designed to be used for permanent residential occupancy whether or not on a permanent foundation, [*which dwelling unit*] **and that** contains permanent eating, cooking, sleeping and sanitary facilities and meets such standards as the department determines, by rule, are reasonable to maintain the quality, safety and durability of the dwelling, the sanitary requirements of the communities in which they

are located and the security of the loans [which] **that** the department may finance for the purchase of the dwellings.

(14) "Nonprofit housing corporation" means an organization formed under ORS chapter 65 and whose articles of incorporation provide, in addition to the other requirements of ORS chapter 65, that:

(a) The corporation has been organized exclusively to provide housing facilities for persons and families of lower income and such other social, recreational, commercial and communal facilities as may be incidental to such housing facilities.

(b) All the income and earnings of the corporation shall be used exclusively for corporation purposes and that no part of the net income or net earnings of the corporation [shall] **may** inure to the benefit of any private individual, firm, corporation, partnership or association.

(c) The corporation is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in transactions therewith.

(d) The operations of the corporation may be supervised by the department and that the corporation shall enter into such agreements with the department as the department may require to regulate the planning, development and management of any housing project undertaken by the corporation and the disposition of the property and other interests of the corporation.

(15) "Project cost" or "costs of the project" means the sum of all reasonable expenses incurred by a qualified housing sponsor in undertaking and completing a housing project approved by the department. [Such costs] **"Project costs" or "costs of the project"** include but are not limited to the expenses incurred by a qualified housing sponsor for:

(a) Studies and surveys;

(b) Plans, specifications, architectural and engineering services;

(c) Legal, organizational and other special services;

(d) Financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated housing units;

(e) Movement of existing buildings to new sites; the cost of acquisition, or estimated fair market value, of land and other interests in real estate;

(f) Rehabilitation, reconstruction, repair or remodeling of existing buildings;

(g) Estimated carrying charges during construction and for a reasonable period thereafter;

(h) Placement of tenants or occupants and relocation services in connection with the housing project;

(i) Reasonable builder's or sponsor's profit and risk allowance; and[, to the extent not already included, all]

(j) Development costs **not otherwise included in this subsection.**

(16) "Qualified housing sponsor" includes, subject to the approval of the department, a consumer housing cooperative, a limited dividend housing sponsor, a nonprofit housing corporation, a for-profit housing sponsor including, but not limited to, an individual operating in compliance with the criteria adopted by the department under ORS 456.620 (1), a housing authority created by ORS 456.075, an urban renewal agency created by ORS 457.035 and any city or county governing body or agency or department designated by the governing body.

(17) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including land development and acquisition, construction or rehabilitation of buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto and as the department determines improve the quality of the development as it relates to housing for persons or families of lower income and the financial feasibility of the development. Not more than 50 percent of the total amount of any financing provided by the department for a particular development [shall] **may** be used to finance nonhousing facilities. "Residential housing" includes, but is not limited to, a specific work or improvement within this state undertaken to provide mobile home or manufactured dwelling parks as defined in ORS 446.003. As used in this subsection, "land development" includes, but is not

limited to, the improvement of streets and alleys and the construction of surface drains, sewers, curbing and sidewalks.

(18) "Residential loan" means a loan for the acquisition, construction, improvement or rehabilitation of residential housing and, if the loan is for acquisition or construction of residential housing, [which] **that** is secured by a first lien on real property located in the state and improved by a newly constructed, existing or rehabilitated residential structure for lower income persons or families, or unimproved if the proceeds of such loan shall be used for the erection of a residential structure thereon, whether or not such loan is insured or guaranteed by the United States or any instrumentality or agency thereof. [The term also] "**Residential loan**" includes an insured or guaranteed loan for the acquisition of manufactured housing, [which] **The** insured or guaranteed loan need not be secured by a first mortgage on real property but shall be secured by a security interest of first priority. [The term] "**Residential loan**" also includes a loan for the purchase of a proprietary lease and related cooperative shares in a housing cooperative formed under ORS chapter 62 secured by a security interest of first priority and a pledge or an assignment of proprietary leases and related cooperative shares.

(19) "Revolving account" means the Housing and Community Services Department Revolving Account created in ORS 456.574.

SECTION 3. ORS 456.620 is amended to read:

456.620. In carrying out housing programs, the Housing and Community Services Department shall:

(1) With the approval of the State Housing Council, adopt standards for the planning, development and management of housing projects for which qualified housing sponsors receive all or a portion of any required financing under ORS 456.550 to 456.725, for audits and inspections to determine compliance with such standards and adopt criteria for the approval of qualified housing sponsors under ORS 456.550 to 456.725.

(2) Adopt criteria for the approval of qualified housing sponsors in ORS 456.550 to 456.725.

(3) Enter into agreements with qualified housing sponsors to regulate the planning, development and management of housing projects constructed with the assistance of the department under ORS 456.550 to 456.725.

(4) With the approval of the council, establish maximum **household** income limits [which shall in no case exceed 120 percent of the median family income level, as determined by the department, in the area where housing is to be provided. No more than 20 percent of the units of a housing project shall have an income level of between 100 and 120 percent of the level determined by the department. However, the department may waive the income limits for elderly households seeking residence within an elderly or disabled housing project if a person in the household falls within the target population described under ORS 456.515 (10)(b). Where programs of the department are administered on a state-wide basis.] **for all or a portion of the units in housing projects, housing developments or other residential housing financed in whole or in part by the department. A maximum of one-third of the units in a housing project, housing development or other residential housing financed by the department may be rented to households with an income level exceeding 120 percent of the median family income level, as determined by the department. If the income level in any unit exceeds 120 percent of the median family income, the department shall, to the extent practicable, require that the project, development or other housing financed by the department have a percentage of low income units that is higher than the minimum percentages established in ORS 456.120 (19) for projects financed by local housing authorities or income limitations that are lower than the limits described in ORS 456.120 (19) or a combination thereof. Income limits for department programs administered on a statewide basis may be established by reference to the median family or personal income in the state, or in various regions in the state, as determined by the department. This subsection does not restrict the acquisition of manufactured dwelling parks.**

(5) With the approval of the council, [insure] **ensure** that financing is provided in the department's programs for manufactured housing.

SECTION 4. ORS 456.625 is amended to read:

456.625. The Housing and Community Services Department may:

(1) Undertake and carry out studies and analyses of housing needs within the state and ways of meeting such needs and make the results of such studies and analyses available to the public, qualified housing sponsors and the private housing sector.

(2) Prepare proposals on measures it considers necessary to address administration, housing programs or community services programs.

(3) With the approval of the State Housing Council, charge fees or interest in connection with housing programs.

(4) Encourage community organizations to assist in initiating housing projects for persons and families of lower income.

(5) Encourage the salvage of usable housing scheduled for demolition or dislocation because of highway, school, urban renewal or other public projects by seeking authority for the public agencies involved in such programs to use the funds provided for the demolition or relocation of such buildings to enable qualified housing sponsors to relocate and rehabilitate such buildings for use by persons and families of lower income.

(6) Encourage research and demonstration projects to develop techniques and methods for increasing the supply of adequate, decent, safe and sanitary housing for persons and families of lower income.

(7) Make or participate in the making of residential loans to qualified individuals or housing sponsors to provide for the acquisition, construction, improvement, rehabilitation or permanent financing of residential housing or housing development; undertake commitments to make residential loans; purchase and sell residential loans at public or private sale; modify or alter such mortgages or loans; foreclose on any such mortgage or security interest or commence any action to protect or enforce any right conferred upon the department by any law, mortgage, security, agreement, contract or other agreement and to bid for and purchase property that is subject to such mortgage or security interest at any foreclosure or other sale; acquire or take possession of any such property and complete, administer, conserve, improve and otherwise use the property to accomplish the department's purposes, pay the principal and interest on any obligations incurred in connection with such property and dispose of such property in such manner as the department determines necessary to protect its interests under ORS 456.515 to 456.725 and ORS chapter 458.

(8) Unless specifically exempted by the State Treasurer, deposit with the State Treasurer any funds held in reserve or sinking funds under ORS 456.515 to 456.725 and ORS chapter 458 and any other moneys not required for immediate use or disbursement by the department, subject to the provisions of any agreement with holders of bonds entered into prior to October 15, 1983.

(9) Advise and assist in the creation of any nonprofit housing corporation, consumer housing cooperative or limited dividend housing sponsor and give approval of the articles of incorporation and bylaws of any such organization in carrying out ORS 456.515 to 456.725.

(10) Cooperate with and exchange services, personnel and information with any federal, state or local governmental agency.

(11) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state or local governmental agencies, in carrying out ORS 456.515 to 456.725 and ORS chapter 458.

(12) **Contract for, act on or** perform any other duties that the department considers necessary [*in carrying*] **or appropriate to carry** out housing programs and community services programs.

(13) Purchase, service, sell and make commitments to purchase, service and sell residential loans to the extent permitted by ORS 456.635 and 456.640 (1) to (3).

(14) Initiate or assist appropriate state agencies, governmental bodies and public or private housing sponsors in the development, construction, acquisition, ownership, leasing, rehabilitation or management of housing to carry out the purposes of ORS 456.515 to 456.725 and ORS chapter 458 where such housing is not otherwise affordable or available in the area.

(15) Execute and record written instruments that contain terms, including but not limited to restrictive covenants or equitable servitudes, pertaining to the use and enjoyment of housing projects. Notwithstanding any other provision of law, the executed instruments shall constitute and create restrictive covenants affecting and running with the property according to the terms of the instruments when recorded in the records of the county where the property is located. County clerks shall accept the instruments for recording when presented by or on behalf of the department.

[(15)] **(16)** Subject to the provisions of any agreement then existing with bondholders, make available funds by contract, grant, loan or otherwise, including loan guarantees, insurance or other financial leveraging techniques, from moneys made available by the department to carry out the purposes of ORS 456.515 to 456.725, if such moneys are not needed for the operations of the department or otherwise determined by the director to be a necessary or prudent reserve.

SECTION 5. ORS 456.578 is amended to read:

456.578. (1) Subject to other applicable laws and agreements entered into with bondholders, amounts received by, or appropriated to, the Housing and Community Services Department may be applied to funds and accounts as the director determines necessary or appropriate for the payment of expenses of programs administered by the department and to provide reserves against losses and security for bonds. All amounts deposited in the funds or accounts administered by the department under ORS 456.515 to 456.725 and ORS chapter 458, are continuously appropriated for the purposes of ORS 456.515 to 456.725 and ORS chapter 458.

(2) The Housing and Community Services Department may establish and maintain a petty cash fund, in an amount not to exceed [S200] **\$300**, for the purpose of paying minor incidental expenses in the administration of the department.

SECTION 6. The amendments to ORS 456.625 by section 4 of this 2001 Act, providing that executed instruments that contain terms pertaining to the use and enjoyment of housing projects shall constitute and create restrictive covenants affecting and running with the property according to the terms of the instruments, apply to instruments recorded before, on or after the effective date of this 2001 Act.

Passed by House May 29, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate June 20, 2001

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President of Senate

Received by Governor:

.....M.,....., 2001

Approved:

.....M.,....., 2001

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2001

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Secretary of State