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Fiscal Note

Drafting Number: LLS 24-0096 Date: February 12, 2024
Prime Sponsors: Rep. Boesenecker; Sirota Bill Status: House Trans., Hous. & Local Govt
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Bill Topic: LOCAL GOVERNMENT RIGHTS TO PROPERTY FOR AFFORDABLE HOUSING

Summary of Fiscal Impact: [X] State Revenue [] State Transfer [X] Local Government
[X] State Expenditure [] TABOR Refund [] Statutory Public Entity

The bill creates a right of first offer and a right of first refusal for local governments to purchase multi-unit residential properties for long-term affordable housing. The bill increases state and local expenditures beginning FY 2024-25.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill gives a local government a right of first offer and a right of first refusal to obtain residential properties for long-term affordable housing. Long-term affordable housing means that the annual rent for any unit will not exceed the rent for households of a given size at the applicable area median income for a minimum of 100 years, and the local government agrees not to raise rent for any unit by more than the bill's specified rent increase cap.

Right of first refusal. Under the bill, the right of first refusal exists for multifamily residential or mixed-use rental property that is existing affordable housing, excluding mobile home parks. Local governments are given the right to purchase a qualifying property for an economically or substantially identical offer to another offer that a seller receives. Any purchase or sale agreement for a qualifying property by a seller is contingent on the first refusal of the local government where the property is located.

Right of first offer. Under the bill, the right of first offer exists for multifamily residential or mixed-use rental property consisting of not more than 100 units and not less than five units in urban counties, and not less than three units in rural or rural resort counties, as those classifications are determined by the Division of Housing in the Department of Local Affairs. For qualifying properties, the bill gives a local government the right to make an offer to purchase the property before it is listed for sale to third parties. The right of first offer repeals on December 31, 2029.

Common provisions. For either of these new rights, a local government may partner with a nonprofit entity to co-finance, lease, or manage qualifying property as long-term affordable housing. At any time, the local government may assign its rights to the state, another political subdivision, or a housing authority so long as the property is used to preserve or be converted for long-term affordable housing.

The bill details the obligations of residential sellers of qualifying properties to provide notice to local governments when an owner intends to sell the property, or when a property's existing affordability restrictions will expire, and the obligations of local governments to notify residential sellers of any intent to exercise the right of first offer or first refusal on qualifying properties.

The Department of Law is authorized to enforce the bill and intervene in any action brought pursuant to disputes of a local government's rights. If a court finds a residential seller is in material violation the court must award a statutory penalty of not less than \$30,000. Courts may also grant injunctive relief for violations, as well as award damages, attorney fees, and costs to a prevailing party.

State Revenue and Expenditures

The bill minimally increases workload, and potentially costs, for several state agencies, as described below.

Department of Law. The bill may increase workload for the Department of Law to enforce the provisions of the bill and intervene in actions brought when disputes are raised against a local government's right of first offer or first refusal. The department may also have increased workload to provide legal services if a local government partners with the state to take possession of long-term affordable housing properties. If there are additional funding requirements for these efforts, the department will seek resources during the annual budget process.

Judicial Department. The bill may also increase revenue from filing fees and workload in the trial courts to consider civil actions brought by local governments, residential sellers, or the Department of Law. However, this fiscal note assumes sellers of housing properties will follow requirements and that any increase in civil cases will create minimal revenue and not require new appropriations.

Department of Local Affairs. Workload may increase in the Department of Local Affairs (DOLA) to provide technical assistance and information to local governments about the new rights created by the measure. Similarly, the Division of Housing in DOLA may have additional workload related to affordable housing projects if the state funds or partners with a local government. It is assumed that this work can be accomplished within existing resources.

Local Government

Local governments that exercise the rights of first offer or of first refusal will have increased expenditures for property purchase and management, and for costs associated with required notifications and public meetings. These costs are not estimated and will depend on future local decisions and actions. If there are civil actions to enforce violations, a fine of at least \$30,000 may be awarded to a prevailing local government.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to qualifying properties that are listed for sale on or after that date.

State and Local Government Contacts

Counties	Judicial	Law
Local Affairs	Municipalities	Regulatory Agencies
Secretary of State		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).