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(As Introduced)

**Reps. Schneider, Cates, Clancy, Buehrer, Trakas, Schmidt, Seitz, Brinkman,
Flowers, Faber, Jolivette, Lendrum, Carmichael, Schuring, Setzer**

BILL SUMMARY

- Removes the Ohio Housing Finance Agency from the Department of Development and establishes the Agency as an independent agency administered by an 11-member board.
- Establishes the Agency's mission as assisting with the financing, production, development, and preservation of housing for low- and moderate-income households and promoting community development, economic stability, and growth in Ohio.
- Specifies Agency membership as the Directors of Development and Commerce and nine members to be appointed by the Governor with the advice and consent of the Senate.
- Establishes six-year terms of office of Agency members.
- Requires Agency members to meet ethics requirements and permits specified exemptions from ethics laws when members do not participate in decisions.
- Establishes compensation of Agency members of \$250 per meeting, not to exceed \$4,000 per year, and permits remuneration for actual and necessary expenses.
- Directs the Agency to elect a chairperson and vice chairperson and authorizes the appointments of other officers.
- Requires the Agency to maintain records and, annually, prepare an annual plan, a financial report, and report of programs, and to conduct at

least one public hearing the purpose of which is to obtain public input about Agency programs.

- Requires the Agency to adopt bylaws, establish compensation levels for employees, and adopt an operating budget.
- Requires the Agency to serve as the housing credit agency for the state and administer state and federal programs.
- Permits the Agency to issue bonds and administer programs of financial assistance.
- Enables the Agency to provide emergency housing assistance when the Governor declares a state of emergency or disaster.
- Requires that applicants for Agency funding assistance provide notice to specified public officials when a multifamily housing project would be located in the jurisdiction of such public officers and provides procedures for comment.
- Exempts the Agency's bonding powers from Revised Code provisions governing state revenues and funds and the Uniform Depository Act.
- Declares that bonds issued pursuant to the bill do not constitute a debt or the pledge of the faith and credit of the state or any political subdivision.
- Specifies that bonds are payable solely from the revenues and security interests pledged for their payment, except for anticipation bonds and refunding bonds.
- Permits the Agency to issue bonds for any term, interest rate, method of calculating interest, and allows any condition or provision to be included in the resolution authorizing the bonds.
- Permits bonds to be sold at public or private sale for an amount not less than the price the Agency establishes and provides procedures for executing the bonds.
- Clarifies that no Agency member is liable personally on the bonds or is subject to personal liability by reason of the issuance of the bonds.

- Requires state officials to take all measures necessary to assure that the interest is exempt from taxation with respect to bonds that the Agency intends to be tax exempt.
- Permits the securing of bonds through the use of trust agreements.
- Creates the Housing Development Fund and the Housing Guarantee Fund in the custody of the Treasurer of State but specifies that the funds are not part of the state treasury.
- Exempts specified information in the Agency's possession from the Ohio Open Records Law.
- Requires state agencies, departments, and boards to cooperate with the Agency and provide information the Agency determines necessary or helpful.
- Permits the Agency to contract with other entities to perform functions the bill authorizes the Agency to perform.
- Stipulates that the Agency's property is public property exempt from taxation.
- Permits the Agency to enter into contracts with suppliers, and exempts the Agency from sections of the Revised Code that govern public works, office services, public improvements, and state purchases.
- Pledges the state to not limit or alter rights of the Agency or a successor agency to fulfill the terms of agreements with bondholders.
- Makes modifications in the law governing the Low- and Moderate-Income Housing Trust Fund to reflect that the Agency is an independent agency and transfers some of the Agency's functions relating to the Trust Fund to the Department of Development.
- Provides for the Agency's transition from the Department of Development on the effective date of the bill, with the Agency taking over the functions that had been associated with it in the Department of Development.

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CONTENT AND OPERATION

The bill

Overview of changes

The bill removes the Ohio Housing Finance Agency from the Department of Development, making it an independent agency.¹ Under the bill, the Agency continues to be governed by an 11-member board as under current law and continues to have authority to develop and administer programs to assist in the provision of affordable housing to low- and moderate-income families, issue and sell bonds, and enter into contracts with other entities including the federal Department of Housing and Urban Development (HUD) and state agencies.

Policy and purpose of Agency

The bill declares that it is the public policy of the state to improve and promote the public health, safety, convenience, welfare, and prosperity of the people of the state by the production of housing. (Sec. 175.02(B).) The bill further declares that the bill is necessary for the welfare of the state and its inhabitants, and that the bill's provisions are to be liberally construed to effect its purposes and the purposes of Section 14 of Article VIII, Ohio Constitution. (Sec. 175.12(A).)

The Ohio Housing Finance Agency

The bill establishes the Ohio Housing Finance Agency, a body corporate and politic, as an independent agency and removes the Agency from the Department of Development. The Agency's mission includes assisting with the financing and refinancing, production, development, and preservation of housing for rental and owner-occupancy by low- and moderate-income households. The Agency also is to promote community development, economic stability, and

¹ For a brief description of the Agency as it operates under current law, see the **COMMENT** at the end of the analysis.

growth within Ohio. To accomplish its purposes and mission, the Agency is to work with eligible households, nonprofit and for-profit housing development entities, public entities, and lending institutions. The Agency may monitor recipients' use of Agency funds to assure compliance with Agency programs. (Sec. 175.02(A).)

Composition of the Agency

Under the bill, as under current law, the Agency consists of 11 members, with the membership representing the same entities as under current law. The Governor, with the advice and consent of the Senate, is charged with appointing nine of the members. The other two members are the Director of Commerce and the Director of Development, or their respective designees. (Sec. 175.03(A)(1).)

Of the nine appointed members, the bill requires that one have experience in residential housing construction, one have experience in residential housing mortgage lending, loan servicing, or brokering, one have experience in the licensed residential housing brokerage business, one have experience with the housing needs of senior citizens, one be from a background in labor representation in the construction industry, one represent the interests of nonprofit multifamily housing development corporations, one represent the interests of for-profit multifamily housing development organizations, and two will be public members. (Sec. 175.03(A)(2).)

The bill directs the Governor to receive recommendations for the Ohio Housing Council for appointees to represent the interests of nonprofit multifamily housing development corporations and for-profit multifamily housing development organizations. Each appointee representing multifamily housing interests is required to be currently employed with an organization that is active in the area of affordable housing development or management. (Sec. 175.03(A)(3).)

The bill stipulates that no more than six of the appointed members of the Agency may be of the same political party. (Sec. 175.03(A)(4).)

Term of office

The bill establishes procedures for appointing Agency members and designating the initial term of office of members. After initial appointments, each term of office is for six years. A member appointed to fill a vacancy that occurs prior to the expiration of a term continues in office for the remainder of the term and any appointed member continues in office subsequent to the expiration date of the member's term until a successor takes office or until 60 days have elapsed, whichever occurs first. The Governor may remove an appointed member for misfeasance, nonfeasance, or malfeasance in office. (Sec. 175.03(B).)

Ethics requirements of members

The bill requires that members file financial disclosure statements described in the ethics requirements for public officials, ORC § 102.02(B). Except as otherwise provided by the bill, the members and employees of the Agency must comply with the ethics requirements for public officials set forth in Chapter 102. of the Revised Code and the Ohio Ethics Law, sections 2921.42 and 2921.43 of the Revised Code. (Sec. 175.03(C)(1) and (C)(2).)

No conflict of interest

The bill states that a member of the Agency who is a director, officer, employee, or owner of a lending institution does not have a conflict of interest with respect to the approval of a loan from that member's lending institution to an applicant or a contract between the Agency and the lending institution for the purchase, administration, or servicing of loans if the member abstains from participation in any matter that affects the interests of the member's lending institution. (Sec. 175.03(C)(3).)

The bill stipulates that the members of the Agency representing multifamily housing interests do not violate specified sections of the ethics law that pertain to unlawful interest in contracts if (1) the contract is entered into for a loan, grant, or participation in a program administered or funded by the Agency, (2) the contract is awarded pursuant to rules or guidelines the Agency adopts, and (3) the member does not participate in the discussion or vote on the contract if the contract secures a grant or loan that directly benefits the member, a family member, or a business associate. (Sec. 175.03(C)(4).)

Compensation

Under the bill, each appointed Agency member receives compensation at the rate of \$250 per agency meeting attended in person, not to exceed a maximum of \$4,000 per year. That compensation rate applies until six years after the effective date of the bill, at which time the members may increase the compensation for members who are appointed or reappointed after that time. All members are entitled to reimbursement for their actual and necessary expenses incurred in the discharge of their official duties. (Sec. 175.03(C)(5).)

Administration of the Agency

The bill directs the Agency to elect a chairperson and vice chairperson. The Agency may also appoint other officers, who need not be members of the Agency. (Sec. 175.04(A).)

The bill establishes that six members of the Agency constitute a quorum, and that the affirmative vote of six members is necessary for any action the Agency takes. No vacancy in Agency membership impairs the right of a quorum to exercise all of the Agency's rights and perform all the Agency's duties. Agency meetings may be held at any place within the state, and meetings must comply with the Ohio Open Meetings Law, ORC § 121.22. (Sec. 175.04(B).)

Records, annual plan, and public hearing

The bill requires the Agency to maintain account records in accordance with generally accepted accounting principles and other required accounting standards. The Agency is required to prepare an annual plan to address the state's housing needs, and is charged with developing policies and program guidelines for the administration of its programs. The Agency must conduct at least one public hearing each year to obtain input from interested parties regarding the administration of the Agency's programs. The Agency must conduct the hearing at a time and place that the Agency determines and when a quorum of the Agency is present. (Sec. 175.04(C) and (D).)

Committees and subcommittees

The bill requires the Agency to appoint committees and subcommittees to handle matters the Agency deems appropriate. Committees and subcommittees must consist solely of members of the Agency. One committee must be created to develop the Agency's annual plan. (Sec. 175.04(E)(1).)

Advisory board

The bill directs the Agency to establish an advisory board to provide input and comment on the development of the annual plan. The advisory board meets prior to the annual public hearing to discuss the annual plan and advisory board comments are presented at the public hearing. The members of the advisory board are to include persons who represent state agencies, local governments, public corporations, nonprofit community development corporations, housing advocacy organizations for low- and moderate-income households, realtors, syndicators, investors, lending institutions, and other entities participating in the Agency's programs. (Sec. 175.04(E)(2) and (E)(3).)

Annual financial report

The bill requires the Agency to prepare an annual financial report describing the Agency's activities during the reporting year. The Agency is to submit that report to the Governor, the Speaker of the House of Representatives, and the President of the Senate within three months after the end of the reporting

year. The report must be included in the audited financial statements of the Agency prepared in accordance with generally accepted accounting principles and appropriate accounting standards. (Sec. 175.04(F).)

Annual report of programs

The bill directs the Agency to prepare an annual report of all of the Agency programs, describing how those programs have met the state's housing needs. The Agency is to submit the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate within three months after the end of the reporting year. (Sec. 175.04(G).)

Operation of the Agency

Required

The bill requires that the Agency do all of the following:

- (1) Adopt bylaws;
- (2) Employ and fix the compensation of an executive director;
- (3) Establish an operating budget;

(4) Hold in trust all moneys, funds, properties and assets that the Agency acquires or that are directly or indirectly within the Agency's control. Anything held in trust must be used as the bill permits and at no time considered public moneys, public funds, public properties, or public assets, nor subject to Chapter 131. of the Revised Code, which governs state revenues and funds, or Chapter 135. of the Revised Code, the Uniform Depository Act.

- (5) Maintain a principal office and other offices within the state;

(6) Require each Agency member and designated employees to provide a surety bond to the Agency in the penal sum of \$25,000. If the Agency appoints or the executive director hires a treasurer, the treasurer is required to provide a surety bond in the penal sum of \$50,000 or any larger sum the members may require. The surety bonds are to be given at the time the Agency specifies, which must be prior to the issuance of any revenue bonds. The Agency pays the fees for the bonds from Agency funds or the Agency may reimburse any fees to members, officers, or employees who have paid them. (Sec. 175.05(A).)

Permitted operating powers

Under the bill, the Agency may do the following:



(1) Determine income limits for low- and moderate-income individuals and families and establish periodic review of income limits, which may vary from area to area within the state. The bill provides factors to consider in establishing income limits.

(2) Provide technical information, advice, and assistance for the planning, construction, rehabilitation, refinancing, and operation of housing;

(3) Provide information, assistance, or instruction related to Agency programs;

(4) Procure or require the procurement of insurance and pay the premium against loss in connection with the Agency's operations;

(5) Contract with, retain, or designate financial consultants, accountants, attorneys, and other consultants and independent contractors;

(6) Charge, alter, and collect interest and other charges for the allocation of loan funds, the purchase of mortgage loans, and the provision of services;

(7) Undertake, carry out, or authorize studies and analyses of housing needs and conditions to the extent that those activities are not carried out by other departments or agencies in a manner satisfactory for the Agency's needs;

(8) Acquire by gift, purchase, foreclosure, or other means, and hold, assign, pledge, lease, transfer or otherwise dispose of real and personal property or any interest in the property. The bill requires that any instrument by which real property is acquired identify that the Agency has the use and benefit of the real property.

(9) Borrow money, receive and accept gifts, grants, loans, or other assistance from any nongovernmental or government source, including the Housing Development Fund, the Housing Guarantee Fund, and the Housing Trust Fund, and enter into contacts in connection with those sources of assistance;

(10) Sue and be sued in its own name with respect to its contracts, obligations, or covenants, or the enforcement of the provisions of the bill. The bill requires that actions brought against the Agency be instituted in a court of competent jurisdiction located in Franklin County, Ohio.

(11) Make and enter into any contract, commitment, or agreement, and execute any instrument necessary or incidental to the performance of its duties and the execution of its powers;

(12) Adopt an official seal;



(13) Contract with any private or government entity for the Agency to administer programs for which it receives sufficient revenues for its services or is able to support by means of uncommitted Agency resources, and administer state or federal programs for which the Governor designates the Agency to act as administrator and for which the Agency may charge administrative fees;

(14) Notwithstanding any other provision of the Revised Code, establish, maintain, administer, and close funds and accounts, as convenient or appropriate to the Agency's operations;

(15) Establish an investment policy to permit the investment of available Agency funds in securities and obligations, including certificates of deposit in eligible institutions;

(16) Establish rules, provisions, and procedures the Agency determines appropriate to appeal the Agency's actions and decisions;

(17) Serve housing needs in instances that the Agency determines necessary as a public purpose;

(18) Provide coverage for its employees under the Public Employees Retirement System, Chapter 145. of the Revised Code, Workers' Compensation, Chapter 4123. of the Revised Code, and Unemployment Compensation, Chapter 4141. of the Revised Code;

(19) Do anything necessary or appropriate to exercise the powers the bill grants and to carry out the purposes of the bill and Section 14, Article VIII, Ohio Constitution, which enables public expenditures for housing. (Sec. 175.05(B).)

Financial powers of the Agency

Required actions

The bill requires the Agency to do all of the following:

(1) Upon the Governor's designation, serve as the housing credit agency for the state and perform all responsibilities of a housing credit agency pursuant to Section 42 of the Internal Revenue Code.

(2) Serve as the administrator for any other state or federal program for which the Agency receives reasonable compensation.

(3) Require that housing that benefits from the Agency's assistance be made available without discrimination in accordance with the requirements of the Ohio Civil Rights Law and all applicable provisions of federal law.

(4) Require that all housing that is acquired, constructed, improved, rehabilitated, preserved, or refinanced with its assistance, directly or indirectly, comply with state and local building codes within the time the agency prescribes.

Permitted actions

The bill permits the Agency to do any of the following:

(1) Issue bonds and refunding bonds, provide security for assets, make deposits, purchase or make loans that reduce the financing costs of housing, provide economic incentives for the development of housing, and provide emergency housing;

(2) Serve as a public housing agency and contract with HUD to administer that department's rent subsidy program and housing subsidy and monitoring programs. The bill requires the Agency to assure that any contract provide for reasonable compensation to the Agency for its services.

(3) Upon receipt of moneys from the Housing Trust Fund, develop and administer programs under which the Agency extends financial assistance or makes grants;

(4) Make financial assistance available;

(5) Guarantee the repayment of financing that a lending institution extends for homeownership or other housing assistance and guarantee debt by using any of the Agency's reserve funds that were not raised by taxation and that are not otherwise obligated for debt service;

(6) Make financial assistance, including federally insured mortgage loans, available for the construction or rehabilitation of housing developments or to refinance existing developments. The Agency may make financial assistance only upon a determination that financial assistance is not otherwise available, in whole or in part, from private lenders on reasonably equivalent terms and conditions.

(7) Invest in, purchase, and take from lenders the assignment of notes or other evidence of debt including federally insured mortgage loans, or participate with lenders in notes and loans for homeownership, development, or refinancing of housing;

(8) Sell at public or private sale, any mortgage or mortgage backed securities that the Agency holds;

(9) Issue bonds to carry out the Agency's purposes;

(10) Extend or otherwise make available housing assistance on terms that the Agency determines. (Sec. 175.06(B).)

Bonds and financial assistance for emergencies and disaster

Under the bill, the Agency may issue bonds and notes and extend financial assistance from any fund the Agency administers for the prompt construction, rehabilitation, replacement, reconstruction, repair, or refinancing of damaged housing in emergency and disaster situations. The bill requires the Agency to establish guidelines for extending financial assistance or grants for emergency and disaster situations, including eligibility criteria for assistance and the terms and conditions under which the Agency will extend financial assistance. The Agency may extend emergency and disaster assistance under the following conditions:

(1) The Governor declares that a state of emergency exists with respect to a county, region, or political subdivision, or declares that a county, region, or political subdivision has experienced a disaster;

(2) The Agency determines that the emergency or disaster has substantially damaged or destroyed the housing in the area of the emergency or disaster and that private enterprise is not able to supply the funds necessary for the prompt construction, rehabilitation, replacement, reconstruction, repair, or refinancing of the housing.

Notice of multifamily rental housing

The bill requires that the Agency not approve the funding for any multifamily rental housing that is to be constructed with Agency assistance or pursuant to any program the Agency operates or administers unless the applicant requesting funding first provides notice of the proposed project to specified persons and inform those persons of procedures for providing comment.

Under the bill, an applicant is required to provide written notice, delivered by certified mail, to all of the following persons:

- The mayor and the clerk of the legislative body in the municipal corporation in which the proposed project is located or that is within one-half mile of the project's boundaries;
- The clerk of any township in which the project will be located or that is within one-half mile of the project's boundaries;
- The clerk of the board of county commissioners of any county in which the project will be located or that is within one-half mile of the project's boundaries.



The bill requires the Agency to provide a written response to any comments it receives from the specified persons. In addition, the Agency must hold a public hearing to solicit and receive comments of residents located in the municipal corporations, townships, and counties in which multifamily rental housing is proposed to be constructed with the assistance of the multifamily bond program. The bill provides notice procedures for the public hearing and specifies that it be held in the county in which the proposed project will be located. (Sec. 175.07(A).)

Bonding powers

The bill permits the Agency to use the proceeds of bonds to carry out the agency's purposes and declares that the Agency is the sole entity in the state authorized to issue bonds pursuant to Section 143(a) of the Internal Revenue Code. When the Agency issues bonds to fund its homeownership program, the bill requires that it attempt to involve qualified lending institutions throughout the state to maximize the distribution of mortgage loans statewide, especially in underserved areas of the state. (Sec. 175.08(A) and (B).)

Bonds issued pursuant to the bill need not comply with any other provision of the Revised Code that applies to the issuance of bonds or notes and that the deposit, application, safeguarding, and investment of Agency funds received or held under the Agency's bond proceedings are not subject to Chapter 131. of the Revised Code, which governs state revenues and funds, or Chapter 135. of the Revised Code, the Uniform Depository Act.

Bonds are not debt of pledge of faith and credit of the state

The bill stipulates that bonds issued pursuant to the bill are not a debt or the pledge of the faith and credit of the state or any political subdivision, and that the holders or owners of those bonds have no right to require the General Assembly or the taxing authority of a political subdivision to levy taxes for the payment of the principal or interest on the bonds. Moneys raised by taxation may not be obligated or pledged for the payment of the principal or interest on bonds issued pursuant to the bill as those bonds are payable solely from the revenues and security interests pledged for their payment, except for anticipation and refunding bonds. (Sec. 175.08(D)(1).)

The bill specifies that refunding bonds are payable solely from revenues and security interests pledged for their payment. Any pledge on refunding bonds is valid and binding from the time the pledge is made and the revenues and security interests pledged and received are immediately subject to the lien of the pledge without any physical delivery or further act, with the lien of the pledge being valid and binding as against all parties having claims of any kind in tort,

contract, or otherwise against the agency, irrespective of whether the parties have notice of the lien of the pledge. (Sec. 175.08(D)(2).)

The bill clarifies that there is no requirement that any resolution or trust agreement by which a pledge is created be filed or recorded except in the records of the Agency. A statement on the face of an issued bond must specify that the bond, as to both principal and interest, is not a debt of the state or any political subdivision of the state, but is payable solely from the revenues and security interests pledged for its payment. (Sec. 175.08(D)(3).)

Term and conditions of bonds

The bill permits the Agency to issue bonds for any term, interest rate, method of calculating interest, including a variable interest rate, and include any provision or condition that the Agency authorizes pursuant to the resolutions it adopts. The agency may authorize any denomination, form, either coupon, registered or book entry, registration privilege, medium of payment, place of payment, and terms of redemption for bonds. (Sec. 175.08(E)(1).)

The bill permits the Agency to sell bonds at public or private sale, for an amount not less than the price that the Agency establishes. The bill directs the Agency chairperson or vice chairperson and other designated officers to execute the bonds manually or by facsimile signature and directs the Agency to affix its seal or a facsimile on the bonds. Any coupons attached to the bonds are to bear the signature or facsimile signature of the chairperson or vice chairperson plus any other officer the Agency designates. If an officer whose signature appears on bonds or coupons ceases to be an officer before the delivery of the bonds, that signature or facsimile is sufficient for all purposes as if the officer had remained in office. If the Agency changes its seal after a facsimile has been imprinted on bonds, that prior facsimile seal is sufficient for all purposes. The Agency may execute bonds in book entry form in any manner appropriate to that form. (Sec. 175.08(E)(2).)

Provisions of the bonds

Subject to existing agreements with bondholders, the bill permits any resolution that authorizes bonds or an issue of bonds to contain provisions that do the following (sec. 175.08(E)(3)):

- (1) Pledge any part of the Agency's revenues and security interests to secure the payment of bonds or any issue of bonds;
- (2) Specify the use, investment, and disposition of the Agency's revenues;

(3) Agree to establish, alter, and collect fees and other charges so that pledged revenues will be sufficient to pay the costs of operation and pay the principal and interest on bonds secured by the pledge of the revenues;

(4) Provide reserves that are required by the applicable resolution or trust agreement;

(5) Set aside reserve funds or sinking funds and regulate and dispose of those funds;

(6) Credit the proceeds of the sale of bonds to and among the funds referred to or provided for in the resolution that authorized the issuance of the bonds;

(7) Establish limits on the purposes to which the proceeds of sale of bonds may be applied and pledge those proceeds to secure the payment of the bonds or any issue of bonds;

(8) Agree to do all things necessary for the authorization, issuance, and sale of bonds in amounts necessary for the timely retirement of notes issued in anticipation of the issuance of bonds;

(9) Establish limits on the issuance of additional bonds;

(10) Establish the terms upon which additional bonds may be issued and secured;

(11) Provide for the refunding of outstanding bonds;

(12) Establish procedures for amending or abrogating the terms of any contract with bondholders and establish the amount of the bonds that the holders must consent to be amended or abrogated and the manner in which that consent may be given;

(13) Establish limits on the amount of moneys the Agency may expend for operating, administrative, or other expenses;

(14) Secure bonds by a trust agreement in accordance with the bill's provisions;

(15) Establish rules and procedures to address matters that affect the security or protection of the bonds.



Liability on bonds

The bill provides that no Agency member nor any person executing Agency bonds is liable personally on the bonds or is subject to any personal liability by reason of the issuance of the bonds. Bonds issued pursuant to the bill are deemed to be negotiable instruments, subject only to the provisions of the bonds for registration, and have the qualities and incidents of negotiable instruments, notwithstanding whether those bonds are of the form or character otherwise to be negotiable instruments. (Sec. 175.08(F) and (G).)

Rights may not be altered

The bill provides that the state may not limit or alter the Agency's or any successor agency's rights to fulfill agreements with the bondholders. The state may not impair the right and remedy of the bondholders until the bond obligations have fully met and discharged, together with interest, interest on unpaid installments of interest, and costs and expenses connected to any bondholder action or proceeding. The state's pledge and agreement may be included in any agreement with bondholders and those bonds are at all times bonds of the state. (Sec. 175.08(H).)

With respect to bonds that the Agency intends to be exempt from federal taxation, the bill requires that the Agency and appropriate state officers do and require anything necessary to assure that the interest on the bonds is exempt from federal income taxation, but error or failure in efforts to assure tax exemption does not affect the validity of the bonds. (Sec. 175.08(I).)

Bonds secured by trust agreement

The bill continues provisions of ongoing law that permit securing bonds by means of trust agreements. The continuing law specifies conditions under which bonds may be secured by trust agreements, the contents of a trust agreement, rights of holders, and the use of moneys in the Agency's trust estates. (Sec. 175.09(A), (B), and (C).)

Housing Development Fund

The bill creates the Housing Development Fund in the custody of the Treasurer of State but the Fund is not part of the state treasury. The Fund consists of amounts loaned to the Agency from unclaimed funds of the state. The Agency may use the Fund for the Agency's purposes, but money in the Fund is at no time public money. (Sec. 175.11(A).)

Housing Guarantee Fund

The bill creates the Housing Guarantee Fund in the custody of the Treasurer of State but not part of the state treasury. The Fund consists of all grants, gifts, and contributions of moneys or rights to moneys made to the Agency for the Fund, all guarantee fees charged and collected, all moneys deposited or credited to the Housing Guarantee Fund, and all other moneys and property designated by the Agency or by law for the purposes of the Fund. The Agency may use the Fund for the Agency's purposes but money in the Fund is at no time public money. (Sec. 175.11(B).)

Statements and data not public documents

The bill stipulates that, notwithstanding the Ohio Open Records Law, section 149.43 of the Revised Code, financial statements and other data submitted to the Agency or the Controlling Board by any person in connection with applying for, receiving, or accounting for financial assistance, as well as information taken from those statements, are not open to public inspection. Information that specifies the identity of individuals benefiting directly or indirectly from financial assistance the Agency provides is not open to public inspection. (Sec. 175.12(B).)

Cooperation of other entities

The bill requires that the state's departments, boards, agencies, institutions, and other bodies cooperate fully with the Agency and provide information that the Agency determines is necessary or helpful for its operation. The Agency may arrange with other entities to perform functions that the bill authorizes the Agency to perform and permits the Agency to compensate other entities for performing those functions. (Sec. 175.12(C).)

Property exempt from taxation

The bill stipulates that any property, real or personal, that the Agency purchases, acquires, owns, or uses in the exercise of its powers and duties is public property used exclusively for a public purpose and that the Agency's property and the income from it is exempt from all taxation within the state, including ad valorem and excise taxes. (Sec. 175.12(D).)

Contracts and agreements

The bill permits any state agency to enter into agreements with the Agency for furnishing supplies, equipment, or services pursuant to terms the parties agree upon. (Sec. 175.12(E).)

Agency exempt from requirements

The Agency is exempt from the following requirements set forth in the Revised Code: Chapter 123., which governs public works, Chapter 125., which governs office services, Chapter 153., which governs public improvements, section 127.16, which governs state purchases, and section 5147.07 which governs the purchase of supplies manufactured by convicts. (Sec. 175.12(F).)

Bondholder agreements will be fulfilled

The bill pledges that the state will not limit or alter the rights vested in the Agency, or in any entity of the state that succeeds to the functions of the Agency, to fulfill the terms of any agreements made with the holders of the bonds, impair the holders' right and remedy until the bonds, together with interest, interest on any unpaid installments of interest, and costs and expenses in connection with any bondholder action or proceeding are fully met and discharged. The Agency may include this pledge in any agreement with the holders of the bonds.

Under the bill, the bonds, at all times, are bonds of the state, subject to the bill's provisions. With respect to bonds that the Agency intends to be exempt from federal taxation, state officials are authorized to take necessary actions so that the interest on those bonds is, and will continue to be, exempt from federal income taxation. (Sec. 175.13.)

Information not public record

The bill stipulates that information submitted to determine the creditworthiness of an applicant is not a public record subject to disclosure pursuant to the Ohio Open Records Law, section 149.43 of the Revised Code. (Sec. 175.13.)

The Low- and Moderate-Income Housing Trust Fund

The bill makes modifications in the Low- and Moderate-Income Housing Trust Fund, in existence under ongoing law, to reflect that the Fund is continuing in the Department of Development while the Ohio Housing Finance Agency is no longer in that Department. The bill shifts some functions from the Ohio Housing Finance Agency to the Department of Development, including charging the Director of Development with determining appropriate income limits for identifying or classifying low- and moderate-income individuals and families for the purposes of the Trust Fund. The bill specifies factors to be considered in establishing those limits. (Sec. 175.23.)

Provisions for transition

The bill provides for the transition of the Ohio Housing Finance Agency from the Department of Development to its status as an independent agency, to take place on the effective date of this bill. The bill transfers to the Agency, all functions, powers, duties, and obligations of the Department of Development that pertain to the Ohio Housing Finance Agency, and all of the Department of Development's records, files, equipment, and contractual obligations that pertain to the Agency. The bill further requires the Agency to conduct and complete any obligations that pertain to the transferred functions in the same manner and under the same terms and conditions and with the same effect as if conducted by the Department of Development.

The bill stipulates that all criteria, acts, determinations, certifications, and decisions of the Department of Development pertaining to the functions transferred and assigned to the Ohio Housing Finance Agency at the time of the transfer, assignment, assumption, or devolution will continue in force as criteria, acts, determinations, certifications, and decisions of the Agency, until the Agency modifies or terminates them.

The bill provides that wherever the bill transfers functions, powers, duties, and obligations of the Department of Development that are referred to or designated in any law, contract, or other document pertaining to those functions, powers, duties, and obligations, the reference or designations are deemed to refer to the Ohio Housing Finance Agency. (Section 3.)

Employee transition

The bill provides for employee transition by specifying that effective with the first pay period in which personal services expenses are charged against fiscal year 2003 appropriations, all employees of the Ohio Housing Finance Agency of the Department of Development will be transferred to the Ohio Housing Finance Agency. Under the bill, all employees retain civil service classifications and status, together with all rights, benefits, and privileges provided by collective bargaining agreements. All vacation time and other benefits earned by Agency employees while in the Department of Development are deemed to have been earned by them as employees of the independent agency. Any employee who, at the time of transfer, has a temporary or provisional appointment will be transferred subject to the same right or removal, examination, or termination as though the transfer had not been made.

Employees not governed by collective bargaining agreements retain their respective status, governed by Chapter 124. of the Revised Code, which governs state personnel. No action or proceeding pending on the effective date of the bill

brought by the Department of Development that pertains to functions, powers, duties, or obligations that the bill transfers are affected by the transfer but may be prosecuted or defended in the name of the Ohio Housing Finance Agency. In any action or proceeding, the Agency, upon application of the court, will be substituted as a party. (Section 3.)

Controlling Board transfer of funds

The bill directs the Auditor of State to provide the Agency's executive director a comprehensive audit of all of the Department of Development's funds, assets, and liabilities that relate to the Agency's programs. The Auditor is to deliver the audit no later than 120 days after the bill's effective date. Upon receipt of the audit, the Agency's executive director must submit a copy to the Office of Budget and Management, which will request the Controlling Board to transfer to the Ohio Housing Finance Agency any funds, assets, and liabilities that the bill does not otherwise transfer to the Agency. (Section 3.)

Definitions

The bill includes the following definitions (sec. 175.01):

"Bonds" means the bonds, notes, debentures, refunding bonds, refunding notes, and other obligations the Ohio Housing Finance Agency issues pursuant to the bill.

"Costs" means the costs that are certified to the Ohio Housing Finance Agency and that the Agency approves as reasonable and necessary in the development and preservation of housing.

"Development program" means any program that provides, directly or indirectly, for the acquisition, construction, improvement, rehabilitation, or preservation of housing.

"Financial assistance" means an equity position in a project, grants, loans, loan guarantees, and loan subsidies the Ohio Housing Finance Agency makes or extends for the development or refinancing of housing.

"Grant" as used in sections 175.01 to 175.13 of the Revised Code, means funding provided by the Ohio Housing Finance Agency to a person or an organization for a project involving the development, preservation, or refinancing of housing in circumstances where non-repayment is justified by the financing structure of the project, the income of the intended occupants, or for other purposes as determined by the agency. But, "grant," as used in sections 175.21 to 175.26 of the Revised Code, means funding provided by the Department of Development or the Agency to counties, municipal corporations, townships, local

housing authorities and nonprofit organizations for housing and housing assistance for specifically targeted low- and moderate-income families and individuals.

"Homeownership program" means any program for which the Ohio Housing Finance Agency provides financing, directly or indirectly, for the purchase of housing for owner-occupancy.

"Housing" means one or more dwelling units intended to provide non-transient shelter for residents for a period of not less than six months unless a controlling federal or state statute or regulation authorizes a lesser term of occupancy.

"Housing assistance program" means any program that directly or indirectly facilitates or promotes homeownership or provides rental assistance.

"Housing development fund" means the Housing Development Fund created and administered pursuant to section 175.10 of the Revised Code.

"Housing for owner-occupancy" means housing that is intended to be owned and occupied by one household as a principal residence and includes a structure that contains up to four housing units with one of the units being occupied by the owner. "Housing for owner-occupancy" may include any type of structure or unit that is intended to be occupied by its owner, including single-family housing units, units in a planned unit development, condominium units, and shareholder interests in a housing cooperative in which the shareholder is also the occupant of the housing unit appurtenant to the stock interest.

"Housing guarantee fund" means the Housing Guarantee Fund created and administered pursuant to section 175.10 of the Revised Code.

"Housing trust fund" means the Low- and Moderate-Income Housing Trust Fund created and administered pursuant to section 175.21 of the Revised Code.

"Improvement" means any alteration, remodeling, addition, or repair that substantially protects or improves the basic habitability or energy efficiency of existing housing.

"Lending institution" means any financial institution authorized to conduct business in this state, a subsidiary corporation that is wholly owned by a financial institution authorized to conduct business in this state, any mortgage lender approved by the federal housing administrator authorized to conduct business in this state, or a mortgage lender whose regular business is originating, servicing, or brokering real estate loans and who is qualified to do business in this state.

"Loan" means any extension of credit or other form of financing or indebtedness that the Ohio Housing Finance Agency extends directly or indirectly to a borrower for the development of housing or to promote homeownership. "Loan" includes financing that the Agency extends to lending institutions and eligible indebtedness that the Agency purchases from lending institutions.

"Loan guarantee" means any agreement in favor of a lending institution whereby the credit and resources of the Agency or of the Ohio Housing Trust Fund are pledged to secure the payment or collection of financing extended to a borrower to acquire, construct, improve, rehabilitate, or preserve housing, or to refinance any financing previously extended for those purposes.

"Loan subsidy" means any deposit of funds into a lending institution that the Ohio Housing Finance Agency holds or administers with the authorization or direction that the income or revenues that the deposit earns, or could have earned at competitive rates, be applied directly or indirectly to the benefit of housing assistance or financial assistance.

"Low- and moderate-income persons" means individuals and families who, because of insufficient income, cannot afford the amounts that private enterprise charges for safe and sanitary housing.

"Multifamily rental housing" means multiple unit housing intended for rental occupancy.

"Nonprofit organization" means a nonprofit organization authorized to conduct business in this state, including a corporation whose members are members of a metropolitan housing authority.

"Owner" means any person to whom one of the following applies, alone, jointly, or severally:

(1) The person has legal or equitable title to housing together with the right to control or possess that housing. A purchaser of housing sold under a land contract is an owner if that contract vests possession of the housing and the duties of maintenance in the purchaser.

(2) The person has charge, care, or control of housing as executor, executrix, administrator, administratrix, assignee, trustee, or guardian of the estate of the owner.

"Public corporation" means a body corporate and politic, or public entity or public corporation, established pursuant to state or federal law, that has the power to acquire, construct, or rehabilitate housing or to assist in those activities. "Public corporation" includes a metropolitan housing authority created pursuant to Chapter

3735. of the Revised Code and any nonprofit organization created by a metropolitan housing authority, a municipal corporation, or a state agency.

"Revenues" means any fees, charges or other amounts earned or received by or on behalf of the Ohio Housing Finance Agency.

"Security interest" means any lien, encumbrance, pledge, assignment, security interest, mortgage, or other form of collateral the Ohio Housing Finance Agency holds or acquires to secure financial assistance the Agency extends or any loan the Agency makes or acquires.

"Tenant" means any person who occupies a housing unit that is subject to Chapter 5321. of the Revised Code.

COMMENT

The Ohio Housing Finance Agency

The Ohio Housing Finance Agency (OHFA) was created in 1983 to help make housing affordable for low- and moderate-income persons and families. The Agency has instituted a variety of programs pursuant to its powers in Chapter 175. of the Revised Code to provide assistance in home ownership and rental housing development. Generally, with the exception of monies received from the Low- and Moderate-Income Housing Trust Fund, the funding for its programs is not from the General Revenue Fund. Instead, OHFA is a self-supporting, public agency, deriving its revenues through a variety of fees and interest generated by each of the programs it administers. The Agency also receives funds from HUD contract fees and the receipt of housing assistance payments.

Agency programs

The Ohio Housing Finance Agency's ownership programs include the First-Time Homebuyer program, for which the Agency raises mortgage loan funds by issuing and selling tax-exempt mortgage revenue bonds, a down payment assistance program and a program of tax credits for first-time homebuyers. In the area of rental housing development, the Agency administers the Low Income Housing Tax Credit Program for the state, under which the construction of new or rehabilitated rental housing is assisted through federal income tax credits awarded on a competitive basis. The Agency uses transfers from state unclaimed funds and the proceeds of mortgage revenue bonds for its Affordable Housing Loan Program, under which it makes loans to developers of multifamily housing, and administers the federal Section 8 Rental Assistance Program which provides rent subsidies for owners of affordable rental housing.

Governance of the Agency

While located in the Department of Development and under the Director of Development, the Agency is self-directed by an 11-member board. One member represents the Ohio Department of Development and another represents the Department of Commerce. The Governor appoints the remaining nine members for six-year terms. The appointed members represent a variety of housing and public sector entities.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-15-02	p. 1776

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