

HOUSE BILL REPORT

SHB 1734

*As Passed House
March 12, 1991*

Title: An act relating to the purchase of section 8 assisted housing developments.

Brief Description: Providing for the sale and purchase of section 8 assisted housing developments.

Sponsor(s): By House Committee on Housing (originally sponsored by Representatives Nelson, Mitchell, Leonard, Winsley, Ogden, May, Franklin, Van Luven, Wineberry and Anderson).

Brief History:

Reported by House Committee on:
Housing, February 26, 1991, DPS;
Passed House, March 12, 1991, 96-0.

**HOUSE COMMITTEE ON
HOUSING**

Majority Report: *That Substitute House Bill No. 1734 be substituted therefor, and the substitute bill do pass.*
Signed by 8 members: Representatives Nelson, Chair; Franklin, Vice Chair; Mitchell, Ranking Minority Member; Winsley, Assistant Ranking Minority Member; Ballard; Leonard; Ogden; and Wineberry.

Staff: Kenny Pittman (786-7392).

Background: In the 1960s and 1970s, the federal government developed a variety of programs to encourage private sector development of rental housing that would be available to low- and moderate-income persons at affordable rents. The programs were administered by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture's Farmers Home Administration (FmHA). The type of assistance provided to the private sector developers consisted of: (a) periodic interest reduction payments on behalf of the owner to the private financial institution (section 236); (b) direct low-interest rate, long-term loans (section 202); (c) federal insurance on mortgages made by private financial institutions (section 221(d)(3)); or (d) rental subsidies to low- and moderate-income tenants in the development to make the rents affordable (section 8).

Under the HUD and FmHA contracts, certain owners of these federally assisted developments are able to terminate or prepay their federally-subsidized mortgages after 20 years of the 40 year mortgage term and convert projects to more profitable uses, such as condominium complexes or deluxe apartments. A mortgage prepayment and termination of the mortgage insurance contract has the effect of ending federal restrictions over the use of the property for the benefit of low- and moderate-income households. These actions could result in low- and moderate-income tenants being forced to pay more in rent, move or possibly become homeless.

During the next four years, it is estimated that over 5,000 units of federally assisted housing in the state of Washington may be withdrawn from the affordable housing supply by their owners. In 1989, the Legislature revised the state's landlord-tenant provisions to require owners of federally assisted multi-family rental housing developments to give a written 12 month advance notice to tenants, the local government, and the state Department of Community Development prior to the prepayment or termination of the federal subsidies.

As part of the Cranston-Gonzalez National Affordable Housing Act of 1990, Congress, in response to the need to preserve federally assisted rental housing and to have a consistent national policy on housing preservation, adopted permanent legislation to deal with the preservation of Section 221(d)(3) and Section 236 projects. The intent of the legislation is to preserve federally assisted units now at risk of prepayment and conversion to market-rate use. The legislation creates a comprehensive array of incentives and requirements applicable to projects with mortgages insured under Section 221(d)(3) and Section 236 that are eligible for prepayment within 24 months.

Essentially, owners of eligible projects are offered fair market value incentives to continue ownership of the rental housing for low- and moderate-income occupancy, or a fair market sales price if the owner wishes to sell to a purchaser that will keep the units affordable. Acceptance of these incentives lock a project into low- and moderate-income use for its remaining useful life.

One aspect of the Preservation Act was the preemption of state and local laws that: (a) restrict or inhibit the prepayment of any federally-assisted mortgage, or the voluntary termination of any insurance contract, on eligible low-income housing; (b) restrict or inhibit an owner of eligible low-income housing from receiving an approved annual return; (c) impair the ability of any owner of eligible low-income housing to increase rental rates,

transfer the housing, obtain secondary financing; or (d) in the application is limited only to low-income housing where the owner has prepaid the mortgage or terminated the insurance contract. However, it appears that the federal law does not cover housing that is assisted under the federal section 8 provisions that cover new construction or substantial rehabilitation projects.

Summary of Bill: The state's landlord-tenant provisions are revised to require an owner(s) of a multifamily rental housing development, that is assisted under the federal Section 8 new construction or substantial rehabilitation programs, to provide written notice of intent to sell or transfer the property 60 days prior to it being offered for sale on the open market. The written notification of intent to sell or transfer the property must be sent by regular and certified mail to the local government where the property is located and to the state Department of Community Development.

The state Department of Community Development is required to develop and maintain a list of interested public housing authorities, nonprofit organizations, and cities and counties (potential purchasers) that have expressed an interest in bidding on available properties. The Department of Community Development upon receipt of written notification of intent to sell or transfer the property, will provide written notification to potential purchasers that have expressed an interest in bidding on available properties.

The Department of Community Development must approve the form of the notice of intent to sell or transfer tile. The notice must include statements by the owner on: (a) the sales price and any proposed improvements to the development; (b) the rights of the potential purchasers, including tenant associations in the development, for first refusal to purchase the development; (c) the availability of information on monthly operating expenses and recent rent rolls; and (d) future access to inspect the property.

Potential purchasers that have expressed an interest in bidding on available properties have a 90-day right of first refusal to purchase the property. The 90-day right of first refusal is based on the Department of Community Development's receipt of the owner's notice of intent to sell the property.

An additional 90-day period, commencing upon the end of the 90-day right of refusal period, is provided upon written notification to the owner of a potential purchaser's intent to buy or produce a buyer for the property. The owner and

the potential purchaser may extend this period for an agreed upon time.

An owner may withdraw the property from the market at any time during the 180-day period and void all rights of first refusal to a potential purchaser. However, the right of first refusal does not apply if the owner plans to sell the property to a buyer who agrees to maintain the property as low-income housing.

The Section 8 Assisted Housing Preservation Advisory Group (Advisory Group) is established in the Department of Community Development. The advisory group is made up of 11 members. The membership consists of: one representative from the Federal Home Loan Bank of Seattle; two representatives of financial institutions that provide development financing; one representative of the Washington State Housing Finance Commission; one representative of a nonprofit housing development organization; one representative of public housing authorities; one representative of a public-private housing partnership organization; one representative of cities; one representative of counties; one representative of the Department of Community Development, as an ex officio, nonvoting member; and one representative selected by the members of the advisory group to act as chair.

The Department of Community Development shall appoint the members to the advisory group. Staffing is provided by the members of the advisory group. Members shall receive no compensation.

The advisory group shall conduct a study to: (a) determine the most efficient combination of state tax provisions, and direct public and private financing to preserve the continued occupancy of low- and moderate-income persons in section 8 assisted housing developments; (b) determine financial strategies and methods to assist potential purchasers in the purchase of section 8 assisted housing developments; and (c) determine appropriate state tax policies that could be used to assist in the preservation of federally assisted housing.

The advisory group shall provide a written report to the House of Representatives' committees on Housing and Revenue and the Senate Commerce and Labor Committee by December 1, 1991.

Fiscal Note: Requested February 11, 1991.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There are a number of housing developments in King County that have filed their notice of intent to prepay their mortgage. This housing is the most affordable housing in the state. The majority of the tenants in these buildings are elderly. These households cannot afford the new higher rents (usually double what they are paying). The displacement of these households is a human issue that must be addressed.

Testimony Against: None.

Witnesses: Kurt Creager, King County (in favor of original bill); and Steve Fredricksen, Evergreen Legal Services (in favor of original bill).