

ACCESSIBLE HOUSING

2003 GENERAL SESSION

STATE OF UTAH

This act modifies the Community and Economic Development Code. This act permits the Division of Community Development to assist local governments in the development of accessible housing. This act modifies the elements to be considered by the Private Activity Bond Review Board when allocating the state's private activity bond volume cap and modifies the powers of housing authorities. This act modifies the allowable uses of the Olene Walker Housing Loan Fund. This act allows the Department of Community and Economic Development and the Utah Housing Corporation to give consideration to projects that increase the supply of accessible housing. This act provides definitions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

9-4-102, as enacted by Chapter 241, Laws of Utah 1992

9-4-202, as last amended by Chapter 286, Laws of Utah 2000

9-4-505, as last amended by Chapter 95, Laws of Utah 2000

9-4-609, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-705, as last amended by Chapter 181, Laws of Utah 2001

9-4-707, as last amended by Chapter 181, Laws of Utah 2001

9-4-910, as last amended by Chapter 319, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **9-4-102** is amended to read:

9-4-102. Definitions.

As used in this chapter:

(1) "Accessible housing" means housing which has been constructed or modified to be accessible, as described in the construction codes adopted under Section 58-56-4.

~~(1)~~ (2) "Director" means the director of the division.

~~(2)~~ (3) "Division" means the Division of Community Development.

Section 2. Section **9-4-202** is amended to read:

9-4-202. Powers and duties of division.

(1) The division shall:

(a) assist local governments and citizens in the planning, development, and maintenance of necessary public infrastructure and services;

(b) cooperate with, and provide technical assistance to, counties, cities, towns, regional planning commissions, area-wide clearinghouses, zoning commissions, parks or recreation boards, community development groups, community action agencies, and other agencies created for the purpose of aiding and encouraging an orderly, productive, and coordinated development of the state and its political subdivisions;

(c) assist the governor in coordinating the activities of state agencies which have an impact on the solution of community development problems and the implementation of community plans;

(d) serve as a clearinghouse for information, data, and other materials which may be helpful to local governments in discharging their responsibilities and provide information on available federal and state financial and technical assistance;

(e) carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary;

(f) assist in funding affordable housing and addressing problems of homelessness;

(g) support economic development activities through grants, loans, and direct programs financial assistance;

(h) certify project funding at the local level in conformance with federal, state, and other requirements;

(i) utilize the capabilities and facilities of public and private universities and colleges within the state in carrying out its functions;

(j) assist and support local governments, community action agencies, and citizens in the planning, development, and maintenance of home weatherization, energy efficiency, and antipoverty activities; and

(k) assist and support volunteer efforts in the state.

(2) The division may:

(a) accept for and on behalf of, and bind the state to, any federal program in which the state is invited, permitted, or authorized to participate in the distribution, disbursement, or administration of any fund or service advanced, offered, or contributed in whole or in part, by

the federal government for purposes consistent with the powers and duties of the department;

(b) if any federal program requires the expenditure of state funds as a condition to participation by the state in any fund, property, or service, with the governor's approval, expend whatever funds are necessary out of the money provided by the Legislature for the use of the department; ~~and~~

(c) in accordance with Part 13, Domestic Violence Shelters, assist in developing, constructing, and improving shelters for victims of domestic violence, as described in Section 77-36-1, through loans and grants to nonprofit and governmental entities~~[-]; and~~

(d) assist, when requested by a county or municipality, in the development of accessible housing.

Section 3. Section **9-4-505** is amended to read:

9-4-505. Allocation of volume cap.

(1) (a) Subject to Subsection (1)(b), the volume cap for each year shall be distributed by the board of review to the various allotment accounts as set forth in Section 9-4-506.

(b) The board of review may distribute up to 50% of each increase in the volume cap that occurs after the effective date of this Subsection (1)(b) for use in development that occurs in quality growth areas, depending upon the board's analysis of the relative need for additional volume cap between development in quality growth areas and the allotment accounts under Section 9-4-506.

(2) To obtain an allocation of the volume cap, issuing authorities shall submit to the board of review an application containing information required by the procedures and processes of the board of review.

(3) The board of review shall establish criteria for making allocations of volume cap that are consistent with the purposes of the code and this part. In making an allocation of volume cap the board of review shall consider the following:

(a) the principal amount of the bonds proposed to be issued;

(b) the nature and the location of the project or the type of program;

(c) the likelihood that the bonds will be sold and the timeframe of bond issuance;

(d) whether the project or program could obtain adequate financing without an allocation of volume cap;

(e) the degree to which an allocation of volume cap is required for the project or

94 program to proceed or continue;

95 (f) the social, health, economic, and educational effects of the project or program on
96 the local community and state as a whole;

97 (g) the anticipated economic development created or retained within the local
98 community and the state as a whole;

99 (h) the anticipated number of jobs, both temporary and permanent, created or retained
100 within the local community and the state as a whole;

101 (i) if the project is a residential rental project, the degree to which the residential rental
102 project;

103 (i) targets lower income populations; and

104 (ii) is accessible housing; and

105 (j) whether the project meets the principles of quality growth recommended by the
106 Quality Growth Commission created under Section 11-38-201.

107 (4) The board of review shall evidence an allocation of volume cap by issuing a
108 certificate in accordance with Section 9-4-507.

109 (5) (a) From January 1 to June 30, the board shall set aside at least 50% of the Small
110 Issue Bond Account that may be allocated only to manufacturing projects.

111 (b) From July 1 to August 15, the board shall set aside at least 50% of the Pool
112 Account that may be allocated only to manufacturing projects.

113 Section 4. Section **9-4-609** is amended to read:

114 **9-4-609. Powers of housing authority.**

115 (1) Each authority shall have perpetual succession and all the powers necessary or
116 convenient to carry out and effectuate the purposes and provisions of this part.

117 (2) Any authority may:

118 (a) sue and be sued;

119 (b) have a seal and alter it;

120 (c) make and execute contracts and other instruments necessary or convenient to the
121 exercise of its powers;

122 (d) make, amend, and repeal bylaws and rules;

123 (e) within its area of operation, prepare, carry out, and operate projects and provide for
124 the acquisition, construction, reconstruction, rehabilitation, improvement, extension, alteration

125 or repair of any project;

126 (f) undertake and carry out studies and analyses of housing needs within its area of
127 operation and ways of meeting these needs, including data with respect to population and
128 family groups and its distribution according to income groups, the amount and quality of
129 available housing, including accessible housing, and its distribution according to rentals and
130 sales prices, employment, wages and other factors affecting the local housing needs and
131 meeting these needs;

132 (g) make the results of studies and analyses available to the public and the building,
133 housing, and supply industries and engage in research and disseminate information on housing
134 programs;

135 (h) utilize, contract with, act through, assist, and cooperate or deal with any person,
136 agency, institution, or organization, public or private, for the provision of services, privileges,
137 works, or facilities, or in connection with its projects;

138 (i) notwithstanding anything to the contrary contained in this part or in any other
139 provision of law, agree to any conditions attached to federal financial assistance relating to the
140 determination of prevailing salaries or wages or payment of not less than prevailing salaries or
141 wages or compliance with labor standards in the development or administration of projects,
142 include in any contract awarded or entered into in connection with a project stipulations
143 requiring that the contractor and all subcontractors comply with requirements as to minimum
144 salaries or wages and maximum hours of labor, and comply with any conditions attached to the
145 financial aid of the project;

146 (j) lease, rent, sell, or lease with option to purchase any dwellings, lands, buildings,
147 structures, or facilities embraced in any project;

148 (k) subject to the limitations contained in this part with respect to the rental or charges
149 for dwellings in housing projects, establish and revise the rents or charges therefor;

150 (l) own, hold, and improve real or personal property;

151 (m) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or
152 otherwise any real or personal property or any interest in it;

153 (n) sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal
154 property or any interest in it;

155 (o) make loans for the provision of housing for occupancy by persons of medium and

156 low income;

157 (p) make loans or grants for the development and construction of accessible housing;

158 ~~[(p)]~~ (q) insure or provide for the insurance, in stock or mutual companies, of any real

159 or personal property or operations of the authority against any risks or hazards;

160 ~~[(q)]~~ (r) procure or agree to the procurement of government insurance or guarantees of

161 the payment of any bonds, in whole or in part, issued by the authority, including the power to

162 pay premiums on any insurance;

163 ~~[(r)]~~ (s) invest any funds held in reserves, sinking funds, or any funds not required for

164 immediate disbursement in property or securities in which savings banks may legally invest

165 funds subject to their control;

166 ~~[(s)]~~ (t) redeem its bonds at the redemption price established or purchase its bonds at

167 less than redemption price, with all bonds so redeemed or purchased to be canceled;

168 ~~[(t)]~~ (u) within its area of operation, determine where blighted areas exist or where

169 there is unsafe, insanitary, or overcrowded housing;

170 ~~[(u)]~~ (v) make studies and recommendations relating to the problem of clearing,

171 replanning, and reconstructing blighted areas, and the problem of eliminating unsafe,

172 insanitary, or overcrowded housing and providing dwelling accommodations and maintaining a

173 wholesome living environment for persons of medium and low income, and cooperate with any

174 public body or the private sector in action taken in connection with those problems;

175 ~~[(v)]~~ (w) acting through one or more commissioners or other persons designated by the

176 authority, conduct examinations and investigations and hear testimony and take proof under

177 oath at public or private hearings on any matter material for its information;

178 ~~[(w)]~~ (x) administer oaths, issue subpoenas requiring the attendance of witnesses or the

179 production of books and papers, and issue commissions for the examination of witnesses

180 outside the state who are unable to appear before the authority or are excused from attendance;

181 ~~[(x)]~~ (y) make available to appropriate agencies, including those charged with the duty

182 of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe

183 or insanitary structures within its area of operation, its findings and recommendations with

184 regard to any building or property where conditions exist that are dangerous to the public

185 health, morals, safety, or welfare; and

186 ~~[(y)]~~ (z) exercise all or any part or combination of the powers granted under this part.

(3) No provision of law with respect to the acquisition, operation, or disposition of property by other public bodies is applicable to an authority unless the Legislature specifically states that it is.

Section 5. Section **9-4-705** is amended to read:

9-4-705. Activities authorized to receive fund moneys -- Powers of the executive director.

At the direction of the board, the executive director may:

(1) provide fund moneys to any of the following activities:

(a) acquisition, rehabilitation, or new construction of low-income housing units;

(b) matching funds for social services projects directly related to providing housing for special-need renters in assisted projects;

(c) the development and construction of accessible housing designed for low-income persons;

~~(d)~~ (d) shelters and transitional housing for the homeless; and

~~(e)~~ (e) other activities that will assist in improving the availability or quality of housing in the state for low-income persons;

(2) do any act necessary or convenient to the exercise of the powers granted by this part or reasonably implied therefrom including:

(a) making or executing contracts and other instruments necessary or convenient for the performance of the executive director and board's duties and the exercise of the executive director and board's powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;

(b) procuring insurance against any loss in connection with property or other assets held by the fund, including mortgage loans, in amounts and from insurers it considers desirable;

(c) entering into agreements with any department, agency, or instrumentality of the United States or this state and with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, purchase, construction, reconstruction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of any residential housing undertaken with the assistance of the department under this part;

(d) proceeding with a foreclosure action, to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, encumber, sell, or otherwise dispose of any real or personal property obtained by the fund due to the default on any mortgage loan held by the fund in preparation for disposition of the property, taking assignments of leases and rentals, proceeding with foreclosure actions, and taking other actions necessary or incidental to the performance of its duties; and

(e) selling, at a public or private sale, with public bidding, any mortgage or other obligation held by the fund.

Section 6. Section **9-4-707** is amended to read:

9-4-707. Application process and priorities.

(1) (a) In each calendar year that moneys are available from the fund for distribution by the executive director under the direction of the board, the director shall, at least once in that year, announce a grant and loan application period by sending notice to interested persons.

(b) The executive director shall accept applications which are received in a timely manner.

(2) The executive director shall give first priority to applications for projects and activities that use existing privately-owned housing stock, including privately owned housing stock purchased by nonprofit public development authorities.

(3) Preference shall be given to applications that demonstrate the following:

(a) a high degree of leverage with other sources of financing;

(b) high recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(c) high local government project contributions in the form of infrastructure improvements, or other assistance;

(d) projects that encourage ownership, management, and other project-related responsibility opportunities;

(e) projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 15 years;

(f) projects where the applicant has demonstrated the ability, stability, and resources to complete the project;

- (g) projects that appear to serve the greatest need;
- (h) projects that provide housing for persons and families with the lowest income;
- (i) projects that promote economic development benefits;
- (j) projects that allow integration into a local government housing plan; and
- (k) projects that would mitigate or correct existing health, safety, or welfare problems.

(4) Consideration may be given to projects that increase the supply of accessible housing.

Section 7. Section **9-4-910** is amended to read:

9-4-910. Corporation -- Powers.

The corporation has and may exercise all powers necessary or appropriate to carry out the purposes of this part, including the following:

- (1) to have perpetual succession as a body politic and corporate, constituting a public corporation, and to adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;
- (2) to sue and be sued in its own name;
- (3) to have an official seal and power to alter that seal at will;
- (4) to maintain an office at any place or places within this state it may designate;
- (5) to adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the corporation and the conduct of its business;
- (6) to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;
- (7) to employ advisers, consultants, and agents, including financial experts, independent legal counsel, and any advisers, consultants, and agents as may be necessary in its judgment and to fix their compensation;
- (8) to procure insurance against any loss in connection with its property and other assets, including mortgage loans, in amounts and from insurers it considers desirable;
- (9) to borrow money and to issue bonds and notes or other evidences of indebtedness as provided in this part;
- (10) to receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, loaned, granted, and applied to carry out the

purposes of this part subject to the conditions, if any, upon which the grants and contributions are made, including gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(11) to enter into agreements with any local public body, any housing sponsor, any department, agency, or instrumentality of the United States or this state, or with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, construction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of, any residential housing undertaken with the assistance of the corporation under this part;

(12) to exercise all of its remedies following the default under any mortgage loan, including:

(a) proceeding with a foreclosure action or private sale to obtain title to the real and personal property held as collateral and taking assignments of leases and rentals;

(b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, and operate this property in preparation for its disposition; and

(c) to assign, encumber, sell, or otherwise dispose of this property;

(13) to invest any funds not required for immediate disbursement, including funds held in reserve, in a manner consistent with applicable provisions of Title 51, Chapter 7, State Money Management Act ~~[of 1974]~~;

(14) to provide technical and financial assistance to housing sponsors and advisory committees in the development or operation of housing for low and moderate income persons;

(15) to gather and distribute data and information concerning the housing needs of low and moderate income families within the various communities of this state;

(16) to the extent permitted under any contract with the holders of bonds, notes, and other obligations of the corporation, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the corporation is a party;

(17) to the extent permitted under any contract with the holders of bonds, notes, and other obligations of the corporation, to enter into contracts with any mortgagor or housing sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges

to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of residential housing being financed;

(18) to acquire property within this state for the purpose of holding it for subsequent disposition to a housing sponsor or other entity that can use it for residential housing for low and moderate income persons, except that if no person can be found to use it in this manner, the corporation may dispose of the property to any person;

(19) to purchase, own and operate residential housing for the benefit, in whole or in part, of low and moderate income persons, so long as the corporation makes reasonable efforts to sell that residential housing to a housing sponsor;

(20) to incorporate or form one or more subsidiaries of the corporation for the purpose of carrying out any of the powers of the corporation and accomplishing any of the purposes of the corporation, to invest in and provide financial assistance to these subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries, and to enter into agreements with these subsidiaries to carry out any of the corporation's powers under this part;

(21) to enter into partnership and limited liability company agreements, to purchase and sell interests in housing sponsors, to serve as general partner of a partnership, and to serve as a manager of a limited liability company to carry out any of the corporation's powers under this part;

(22) to require that persons receiving a mortgage loan or financial assistance from the corporation subject the property involved to restrictive covenants that shall be considered to be running with the land, regardless of whether or not the corporation enjoys privity of estate or whether or not the covenant touches and concerns the burdened property;

(23) to enter into management agreements with any person or entity for the performance by the person or entity for the corporation of any of its functions or powers, with terms and conditions as may be mutually agreeable;

(24) to sell, at public or private sale, with or without public bidding, any mortgage loan or other obligation held by the corporation;

(25) to sell or convey real property owned by the corporation to low or moderate income persons and housing sponsors, without consideration if the sale or conveyance will

342 inure primarily to the benefit of low or moderate income persons living in a housing
343 development;
344 (26) upon making a determination that the financial status of a housing development
345 will jeopardize any economic interest of the corporation in the housing development, to assume
346 managerial and financial control of the property or the owner and to supervise and prescribe the
347 activities of the property or the owner in a manner and under terms and conditions as the
348 corporation may stipulate in any contract;
349 (27) to supervise housing sponsors of housing developments;
350 (28) to service mortgage loans; ~~and~~
351 (29) to give consideration to those activities which promote the availability of
352 accessible housing; and
353 ~~[(29)] (30)~~ to do any act necessary or convenient to the exercise of the powers granted
354 in or reasonably implied from this part.

Legislative Review Note
as of 12-3-02 9:19 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel