

# House Bill 2002

Sponsored by Representative KOTEK

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires property owner subject to affordability restriction to provide more notice to qualified purchasers before restrictions expire. Requires property owners to extend right of first refusal to qualified purchasers for up to 60 months following expiration of affordability restriction. Allows qualified purchasers omitted from notice of sale to repurchase property from purchaser on same terms for one year.

Establishes Affordable Housing Preservation Fund.

Authorizes issuance of lottery bonds for purposes of affordable housing preservation.

## A BILL FOR AN ACT

1  
2 Relating to preserving affordable housing; creating new provisions; and amending ORS 456.250,  
3 456.260, 456.262, 456.263 and 456.264.

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

5 **SECTION 1.** ORS 456.250 is amended to read:

6 456.250. As used in this section and ORS 456.255 to 456.265:

7 (1) "Affordability restriction" means a limit on rents that a property owner may charge at a  
8 participating property or a limitation on the use of a participating property as set forth in a con-  
9 tract.

10 (2) "Contract" means a written agreement entered into by a property owner under which a  
11 participating property becomes publicly supported housing that is subject to an affordability re-  
12 striction. "Contract" includes, but is not limited to, a deed restriction, loan agreement, operating  
13 agreement or any other written agreement that results in an affordability restriction being placed  
14 on the property.

15 (3) "Local government" means a city, county, public corporation[,] **or** metropolitan service dis-  
16 trict [*or other district, political subdivision or any board, commission or agency thereof*].

17 (4) "Participating property" means property that is the subject of a contract by which the  
18 property becomes publicly supported housing that is subject to an affordability restriction.

19 **(5) "Property owner" means the owner of a participating property.**

20 [(5)(a)] **(6)(a)** "Publicly supported housing" means a multifamily rental housing development of  
21 five or more units that receives or benefits from government assistance under:

22 (A) A contract for rent assistance from the United States Department of Housing and Urban  
23 Development, the United States Department of Agriculture or the Housing and Community Services  
24 Department that contains an affordability restriction; or

25 (B) A contract that is for any other type of government assistance or subsidy that includes an  
26 affordability restriction and that is identified in rules adopted by the Housing and Community Ser-  
27 vices Department.

28 (b) "Publicly supported housing" does not include a multifamily rental housing development:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) For which the development or developer receives only a construction excise tax waiver, a  
2 system development charge waiver, a fee waiver or a property tax abatement;

3 (B) That is part of an inclusionary housing program as defined by local government and au-  
4 thorized under [*chapter 59, Oregon Laws 2016*] **ORS 197.309**;

5 (C) That receives tenant-based federal rent subsidy payments under the Housing Choice Voucher  
6 Program authorized by 42 U.S.C. 1437f;

7 (D) That receives project-based rental assistance administered by a housing authority under  
8 section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f (o)(13)); or

9 (E) That receives tenant vouchers from the United States Department of Agriculture under  
10 section 542 of the Housing Act of 1949 (42 U.S.C. 1471).

11 [(6)] (7) “Qualified purchaser” means a local government entitled to notice under ORS 456.260  
12 (2), the Housing and Community Services Department or a designee appointed by the department  
13 under ORS 456.262.

14 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 456.255 to**  
15 **456.265.**

16 **SECTION 3. (1) ORS 456.255 to 456.265 do not apply to or restrict the acquisition of**  
17 **property by:**

18 (a) **A government that acquires the participating property by eminent domain or a ne-**  
19 **gotiated purchase in lieu of eminent domain.**

20 (b) **A purchaser of the participating property in a foreclosure sale that terminates the**  
21 **affordability restrictions.**

22 (c) **A purchaser of the participating property by a deed in lieu of foreclosure provided**  
23 **that the contract restrictions are subordinate to the purchaser’s interest eligible for fore-**  
24 **closure and a notice of the deed in lieu is provided to the Housing and Community Services**  
25 **Department by the purchaser or property owner at least 30 days prior to the execution of**  
26 **the deed in lieu.**

27 (2) **ORS 456.255 to 456.265 may not be interpreted to allow a property owner to terminate**  
28 **or breach a contract or to limit the rights of any tenant of a participating property or any**  
29 **other person who may enforce an affordability restriction against the property owner.**

30 (3) **ORS 456.255 to 456.265 do not require any local government or the department to**  
31 **purchase or condemn any property or to maintain the affordability restrictions of any prop-**  
32 **erty.**

33 (4) **Except as required by contract and ORS 456.255 to 456.265, a property owner may not**  
34 **take any action during the contract term that would materially interfere with a qualified**  
35 **purchaser’s ability to continue maintaining the participating property as publicly supported**  
36 **housing.**

37 (5) **The department shall adopt rules to implement ORS 456.255 to 456.265.**

38 **SECTION 4. ORS 456.260 is amended to read:**

39 456.260. (1) [*For the purpose of dealing with expiring and terminating contracts for participating*  
40 *properties,*] The owner of a participating property shall[:]

41 [(a)] provide notice by registered or certified mail, return receipt requested, to each local gov-  
42 ernment entitled to notice and the Housing and Community Services Department [*two years*] **at least**  
43 **24 months** prior to the date when:

44 [(A)] (a) [*The contract for the property to participate in publicly supported housing will expire or*  
45 *terminate*] **A contract term will expire, permitting the owner to withdraw the participating**

1 **property from publicly supported housing or limit affordability restrictions on the property;**

2 or

3 [(B)] (b) The **owner intends to withdraw the** participating property [*will be withdrawn*] from  
 4 publicly supported housing[, *whether by sale, transfer, nonrenewal of the contract or otherwise, such*  
 5 *that the property will no longer be a participating property*].

6 [(b) Consent to reasonable inspection of the property and inspection of the owner reports on file  
 7 with the Housing and Community Services Department or the United States Department of Housing  
 8 and Urban Development, if applicable.]

9 [(c) Maintain the contract for property participation in publicly supported housing in good standing  
 10 during the notice period referred to under this section.]

11 [(d) Refrain from taking any action, other than notifying the United States Department of Housing  
 12 and Urban Development or other party to the contract of the owner's intention to not renew the contract  
 13 or to withdraw the participating property from publicly supported housing, that would preclude a  
 14 qualified purchaser from succeeding to the contract or negotiating with the owner for the purchase of  
 15 the property.]

16 (2) [A] **The property owner shall send a copy of the notice in subsection (1) of this section**  
 17 **to each** local government [*is entitled to notice under this section if*] **within which** the participating  
 18 property is located [*within the boundaries of the local government*].

19 (3) [*If the property owner does not comply with the notice requirements under subsection (1) of this*  
 20 *section,*] **If the notice is not delivered timely,** the property owner shall extend the affordability  
 21 restriction on the participating property [*by the number of months that the property owner is in*  
 22 *noncompliance with the notice requirements under*] **for no less than 24 months after delivering the**  
 23 **untimely notice under** subsection (1) of this section and [*immediately*] provide notice **of the ex-**  
 24 **ension** to the Housing and Community Services Department and each local government that is  
 25 entitled to notice [*of the extension of the affordability restriction pursuant to this section together with*  
 26 *the notice required*] under subsection [(1)] (2) of this section.

27 [(4) Subsection (1) of this section does not apply when:]

28 [(a) A local government or the state takes the participating property by eminent domain or a ne-  
 29 gotiated purchase in lieu of eminent domain;]

30 [(b) There is a forced sale of the participating property under a foreclosure; or]

31 [(c) The participating property is subject to a deed in lieu of foreclosure.]

32 [(5)] (4) A local government may:

33 (a) Establish and impose any fine, penalty, tax, fee, charge or assessment upon the owner of  
 34 participating property for failure to comply with local regulations adopted to implement the pro-  
 35 visions of subsection (1) of this section.

36 (b) Require an owner to refrain from disturbing tenancies, other than for cause as defined in the  
 37 contract, for a period of not more than 180 days after expiration of the contract or withdrawal of  
 38 the participating property from publicly supported housing if the local government pays, or arranges  
 39 for payment, to the owner on the first day of each month, the monthly subsidy that the owner was  
 40 receiving under the contract.

41 (c) Make application to the Housing and Community Services Department requesting that a lo-  
 42 cal subsidy program be included in the definition of publicly supported housing, as long as the pro-  
 43 gram otherwise complies with and is not excluded from the definition of publicly supported housing.

44 [(6)] (5) Any notices provided under subsection (1)[(a)] of this section shall specify whether the  
 45 owner:

1 (a) Intends to withdraw the participating property from publicly supported housing.

2 (b) Intends to convert the participating property to a nonparticipating use.

3 (c) Is involved in negotiations with the United States Department of Housing and Urban Development, the Housing and Community Services Department or any other individual or entity regarding an extension of an expiring contract **or any other affordability restrictions.**

6 [(7) *ORS 456.255 to 456.265 do not require the Housing and Community Services Department or a local government to purchase, condemn or otherwise acquire participating property.*]

8 [(8) *The Housing and Community Services Department shall adopt rules to implement the provisions of this section with respect to the duties, powers and functions of the department.*]

10 **SECTION 5.** ORS 456.262 is amended to read:

11 456.262. (1) [*Except as provided in subsection (2) of this section,*] A property owner shall provide notice by registered or certified mail, return receipt requested, to [*the Housing and Community Services Department and each local government entitled to notice under ORS 456.260,*] **each qualified purchaser** of the opportunity to offer to purchase a participating property at least 13 months prior to [*the occurrence of any of the following actions if the action will result in*] **any** withdrawal of the participating property from publicly supported housing[:], **including by an expiration of a contract.**

18 [(a) *Refinancing of the primary mortgage;*]

19 [(b) *Recapitalizing for purposes of rehabilitation or repair;*]

20 [(c) *Entering into an agreement to sell the property to a new property owner; or*]

21 [(d) *Withdrawing the participating property from publicly supported housing.*]

22 [(2) *Subsection (1) of this section does not apply when:*]

23 [(a) *A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;*]

25 [(b) *There is a forced sale of the participating property under a foreclosure; or*]

26 [(c) *The participating property is subject to a deed in lieu of foreclosure.*]

27 [(3)(a) *The property owner shall provide the notice required in subsection (1) of this section to afford the qualified purchasers the opportunity to purchase required by this section within the time frames indicated in subsection (5) of this section.*]

30 [(b) *A property owner is under no obligation to accept a qualified purchaser's offer made pursuant to subsection (5) of this section.*]

32 [(4)] (2) The department may appoint a designee to act as purchaser of the participating property. **The appointment becomes effective upon the department delivering to** [*and shall give*] the property owner notice of the appointment of a designee. The department must consult with each local government where the property is located before appointing a designee under this subsection. The department [*must*] **shall** enter into a written agreement with the appointed designee [*providing*] **requiring** that the designee and any of the designee's successors or assigns:

38 (a) Agree to preserve the affordability of the participating property; and

39 (b) Assume all rights and responsibilities attributable to the department as a prospective purchaser of the participating property.

41 [(5)] (3) **After receiving the notice from the property owner under subsection (1) of this section,** a qualified purchaser may[, *within 90 days from the date of a property owner's notice under subsection (1) of this section,*] submit an offer to the property owner to purchase the participating property. **A property owner is under no obligation to accept an offer made under this subsection.** [*Failure by all qualified purchasers to submit a timely offer constitutes an irrevocable waiver*

1 of the each qualified purchaser's rights under this section, and, subject to ORS 456.263, the property  
 2 owner may sell the participating property to a third party or withdraw the participating property from  
 3 publicly supported housing.]

4 [(6)] (4) [If, within 210 days from the date of a property owner's notice under subsection (1) of this  
 5 section or within such other period of time to which the qualified purchasers and the property owner  
 6 may agree, the property owner has not accepted any qualified purchaser's offer to purchase the partic-  
 7 ipating property, each qualified purchaser's offer shall expire, each qualified purchaser's right to pur-  
 8 chase the participating property under this section shall terminate and, subject to ORS 456.263,] The  
 9 property owner may [sell the participating property to a third party or] withdraw the participating  
 10 property from publicly supported housing **and terminate the affordability restrictions upon the**  
 11 **latest of:**

12 (a) **13 months following the owner's delivery of all notices required under subsection (1)**  
 13 **of this section;**

14 (b) **24 months following the owner's delivery of all notices required under ORS 456.260 (1);**  
 15 **or**

16 (c) **Expiration of all affordability restrictions period set forth in any contract.**

17 [(7)] (5) At any time after the notice described in subsection (1) of this section has been pro-  
 18 vided, [a qualified purchaser may request, in writing, that the property owner make available,] within  
 19 30 days of the request **from a qualified purchaser, the property owner shall make available**  
 20 documents that are relevant to the participating property at the property owner's principal place  
 21 of business or at a commercial photocopying facility.

22 [(8)(a)] (6)(a) Notwithstanding the provisions of ORS 192.311 to 192.478 relating to public re-  
 23 cords, the documents provided by the property owner to a qualified purchaser under subsection  
 24 [(7)] (5) of this section are confidential and exempt from public inspection except with the written  
 25 consent of the property owner or as ordered by a court.

26 (b) Notwithstanding paragraph (a) of this subsection, disclosure may be made to potential fund-  
 27 ing sources, regulatory agencies or agents or consultants of a qualified purchaser in connection with  
 28 a transaction between the property owner and a qualified purchaser under this section, subject to  
 29 appropriate confidentiality agreements.

30 [(9) The department shall adopt rules to implement the provisions of this section.]

31 **SECTION 6.** ORS 456.263 is amended to read:

32 456.263. [(1)(a) Within the first 180 days following the expiration of the offer to purchase period  
 33 described in ORS 456.262 (6), a property owner may accept a third party's offer to purchase the par-  
 34 ticipating property. This acceptance shall be made subject to the property owner providing each quali-  
 35 fied purchaser the right of first refusal to purchase the property on the same terms and conditions as  
 36 the third party's offer to purchase, subject to subsection (2) of this section, unless those terms and  
 37 conditions are modified by mutual consent between the qualified purchaser and the property owner.]

38 [(b) The property owner shall provide notice,]

39 (1) **Before selling a participating property that is subject to an affordability restriction**  
 40 **that will terminate in less than six months, or has expired less than 60 months prior, to a**  
 41 **private third party other than a qualified purchaser, a property owner shall send notice of**  
 42 **the property owner's intent to accept a purchase offer** by registered or certified mail, return  
 43 receipt requested, to each qualified purchaser. [of] **The notice must contain a copy of the third-**  
 44 **party offer or** the terms and conditions of the [third party's] offer to purchase **that the property**  
 45 **owner intends to accept.**

1       **(2)** A qualified purchaser shall have 30 days from the date the notice is mailed to exercise *[its]*  
 2       a right of first refusal by *[submitting]* **delivering** a matching offer to purchase the property. The  
 3       property owner shall accept the first matching offer the property owner receives from a qualified  
 4       purchaser under this section.

5       *[(c)]* **(3)** A qualified purchaser’s offer is a matching offer if it is on the same terms and conditions  
 6       as the third party’s offer to purchase, *[but for modifications to ensure compliance with subsection (2)*  
 7       *of this section, unless those terms and conditions are modified by mutual consent among the qualified*  
 8       *purchaser and the property owner.]*

9       *[(2) If a qualified purchaser exercises its right of first refusal, the qualified purchaser and property*  
 10       *owner shall execute a purchase agreement on the same terms and conditions as the third party’s offer,*  
 11       *except that:]* **except that a qualified purchaser’s offer is considered a matching offer**  
 12       **notwithstanding a conflicting term that includes:**

13       (a) *[The]* **An** earnest money deposit *[may not exceed the lesser of]* **that is no less than the least**  
 14       **of the third-party offer**, two percent of the sales price or \$250,000[;].

15       (b) **That** the earnest money deposit *[must be]* **is refundable** *[for at least]* **until the earlier of 90**  
 16       **days**; *and]* **or the date of closing.**

17       (c) *[Closing shall be scheduled at least]* **A closing date that will occur within** 240 days after  
 18       execution of the purchase agreement.

19       **(d) Any nonmaterial term.**

20       **(e) Any other term that the property owner has agreed to waive.**

21       *[(3)]* **(4)** Subsection (1) of this section does not apply *[when]* **if:**

22       *[(a) A local government or the state takes the participating property by eminent domain or a ne-*  
 23       *gotiated purchase in lieu of eminent domain;]*

24       *[(b) There is a forced sale of the participating property under a foreclosure;]*

25       *[(c) The participating property is subject to a deed in lieu of foreclosure or a negotiated purchase*  
 26       *to avoid foreclosure;]*

27       *[(d) There are more than 30 years remaining before the first scheduled termination of an*  
 28       *affordability restriction on the property;]*

29       **(a) The closing date of the third-party offer will occur more than 60 months after the**  
 30       **date the owner is or was eligible to withdraw the property from publicly supported housing**  
 31       **under ORS 456.252 (4);**

32       *[(e)]* **(b)** The property owner accepted a third party’s offer to purchase the participating property  
 33       before *[October 6, 2017]* **the effective date of this 2019 Act**, and has provided documentation of the  
 34       purchase agreement to the Housing and Community Services Department;

35       *[(f)]* **(c)** The third party offeror agrees to *[maintain the]* affordability restrictions on the partic-  
 36       ipating property, as determined by the department *[by rule]*, to ensure that the participating prop-  
 37       erty remains publicly supported housing; or

38       *[(g)]* **(d)** Any additional situations as determined by the department by rule.

39       *[(4)]* **(5)** A property owner that sells participating property to a third party shall certify that the  
 40       owner has complied with all provisions of this section and ORS 456.260 and 456.262. A certification  
 41       of compliance under this section shall:

42       (a) Be recorded in the real property records of the county in which the property is located;

43       (b) Contain a legal description of the property;

44       (c) Identify the property owner as the grantor; and

45       (d) Be acknowledged by the property owner in the manner required for acknowledgment of a

1 deed.

2 *[(5) The department shall adopt rules to implement the provisions of this section.]*

3 **SECTION 7.** ORS 456.264 is amended to read:

4 456.264. (1) Any person who suffers any ascertainable loss of money or property, real or per-  
5 sonal, as a result of the failure of an owner of a participating property to provide notices or other-  
6 wise comply with the provisions of ORS 456.260, 456.262 or 456.263 may bring an individual action  
7 in an appropriate court to recover actual damages. The court or the jury may award punitive dam-  
8 ages, and the court may provide injunctive relief and any other equitable relief the court considers  
9 necessary and proper.

10 (2) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-  
11 vailing plaintiff in an action under this section.

12 **(3) A third-party purchaser of a participating property where a qualified purchaser was**  
13 **not offered a right of first refusal under ORS 456.263 (1) shall accept a purchase offer on the**  
14 **same terms as the offer except as may be modified consistent with ORS 456.263 (3) if the**  
15 **offer is received from the qualified purchaser by the third-party purchaser within one year**  
16 **from the date of closing of the sale. A qualified purchaser may only waive its rights under**  
17 **this subsection in writing.**

18 **SECTION 8.** The amendments to ORS 456.260 and 456.262 by sections 4 and 5 of this 2019  
19 Act apply to participating properties subject to an affordability restriction or contract that  
20 will, by its terms, terminate on or after 30 months following the effective date of this 2019  
21 Act.

22 **SECTION 9.** The amendments to ORS 456.263 and 456.264 by sections 6 and 7 of this 2019  
23 Act apply to participating properties subject to an affordability restriction or contract that  
24 will, by its terms, terminate on or after the effective date of this 2019 Act.

25 **SECTION 10.** The Affordable Housing Preservation Fund is established in the State  
26 Treasury, separate and distinct from the General Fund. The Affordable Housing Preservation  
27 Fund consists of lottery bond proceeds deposited in the fund under section 11 of this 2019  
28 Act. Moneys in the fund are continuously appropriated to the Housing and Community Ser-  
29 vices Department for the department to preserve affordable housing.

30 **SECTION 11.** (1) For the biennium beginning July 1, 2019, at the request of the Oregon  
31 Department of Administrative Services, after the department consults with the Housing and  
32 Community Services Department, the State Treasurer is authorized to issue lottery bonds  
33 pursuant to ORS 286A.560 to 286A.585 in an amount that produces \$25 million in net proceeds  
34 for the purposes described in subsection (2) of this section, plus an additional amount esti-  
35 mated by the State Treasurer to be necessary to pay bond-related costs.

36 (2) Net proceeds of lottery bonds issued under this section must be transferred to the  
37 Housing and Community Services Department for deposit in the Affordable Housing Preser-  
38 vation Fund, established under section 10 of this 2019 Act, to be used for the purposes of the  
39 fund.

40 (3) The Legislative Assembly finds that the use of lottery bond proceeds will create jobs,  
41 further economic development, finance public education or restore and protect parks,  
42 beaches, watersheds and native fish and wildlife, and is authorized based on the finding that  
43 preserving affordable housing in this state will enhance economic viability, promote stability  
44 and improve the quality of life in Oregon.