

Preservation Interim Loan Program

This Act establishes a program and a fund to help qualified buyers quickly access financing in order to gain control of at-risk subsidized housing developments before those developments are converted to market rate properties. The idea behind the legislation is to help preserve a viable number of affordable housing units.

Submitted as:
California
Chapter 721, 2002
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish a Preservation
2 Interim Loan Program.”
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4 Section 2. [*Legislative Findings.*] The [legislature] finds and declares:

5 (a) The federal Housing and Urban Development Department subsidizes units of this
6 state’s affordable rental housing. As the owners' obligations expire, many of these units have
7 already been converted to market-rate housing, and additional units are considered at risk of
8 imminent conversion. In addition, other units financed with state and federal low-income
9 housing tax credits will face some risk of conversion as the first generation of tax credit
10 developments reach the expiration of their income and rent restrictions over the next [five
11 years]. These at-risk units will likely convert to market-rate housing unless they are acquired by
12 organizations that commit to maintaining affordable rents.

13 (b) The loss of these assisted units represents not only a loss of precious affordable
14 housing stock and hardship and potential dislocation for tenants, many of whom are seniors, but
15 also the loss of millions of federal housing assistance dollars to this state each year.

16 (c) This looming loss of affordable rental housing is exacerbated by this state’s failure to
17 produce the new housing units needed to house the state's population in recent years. The
18 shortage is most strongly felt in the areas of low-cost housing for working families, people
19 moving from welfare to work, and seniors and disabled people.

20 (d) Affordable housing organizations that wish to purchase properties at risk of
21 converting to market-rate housing often do not have access to the short-term capital needed to
22 purchase the properties quickly. This lack of short-term capital greatly reduces the likelihood
23 that these properties will remain affordable.

24 (e) The intent of this Act is to create a short-term capital loan program to ensure that the
25 state’s supply of affordable housing is not depleted by the conversion of existing government-
26 assisted rental housing to market-rate housing.
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28 Section 3. [*Definitions.*] As used in this Act:

29 (a) “Assisted housing development” means a multifamily rental housing development
30 that receives governmental assistance under any of the following federal programs:

31 (1) New construction, substantial rehabilitation, moderate rehabilitation, property
32 disposition, and loan management set-aside programs, or any other program providing project-

33 based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42
34 U.S.C. Sec. 1437f).

35 (2) The following federal programs:

36 (i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of
37 the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).

38 (ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

39 (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

40 (3) Programs for rent supplement assistance under Section 101 of the Housing
41 and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

42 (4) Programs under Section 515 of the Housing Act of 1949, as amended (42
43 U.S.C. Sec. 1485).

44 (b) "Fund" means the Preservation Opportunity Fund created by Section 5 of this Act.

45 (c) "Department" means the [state department of housing and community development].

46 (d) "Agency" means the [state housing financing agency].

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48 Section 4. [*Preservation Opportunity Program.*]

49 (a) There is hereby created the "Preservation Opportunity Program."

50 (b) The [department] shall contract with the [agency] for the administration of this
51 section, and the [agency] shall establish the terms upon which loans may be made consistent
52 with this section.

53 (c) A project shall meet all of the following requirements to be eligible for a loan:

54 (1) It shall be an assisted housing development.

55 (2) The borrower shall, in conjunction with this loan, receive a loan from the
56 [agency's] [Preservation Acquisition Program] established under [insert citation] for the
57 acquisition of this project.

58 (3) The borrower shall agree to obligate itself and any successors in interest to
59 maintain the affordability of the assisted housing development for households of very low, low,
60 or moderate income for a term of not less than [30 years]. To the extent economically feasible,
61 the development shall be continuously occupied in the approximate percentages that those
62 households have occupied that development as of the date of acquisition by the purchaser or the
63 approximate percentages specified in existing federal, state, or locally imposed use restrictions,
64 whichever is higher. This obligation shall be recorded at the close of escrow in the office of the
65 county recorder of the county in which the development is located. In addition, the regulatory
66 agreement shall contain provisions requiring the renewal of rental subsidies, if they are available
67 and are provided at a level sufficient to maintain the project's fiscal viability. Nothing in this
68 paragraph shall be construed to require the future income restriction of units unrestricted under
69 the new regulatory agreement required by this subdivision.

70 (d) Projects that meet the requirements of subdivision (c) shall be evaluated for funding
71 based on their ability to address the following priorities:

72 (1) First priority shall be given to projects whose rent restrictions have expired or
73 are eligible to expire within [two years] of application for a loan under this program.

74 (2) Second priority shall be given to projects with rent restrictions expiring
75 within [five years].

76 (e) The loans for assisted housing developments under this section shall include the
77 following terms:

78 (1) The [agency] shall determine the term of the loan. A loan may not exceed a
79 term of [two years], unless the [agency] determines, in its discretion, that a longer term is
80 required to do both of the following:

81 (A) To preserve the affordability of a project.

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(B) To ensure the financial viability of a project.

(2) The rate of interest shall not exceed [3 percent per annum] on the unpaid balance for that portion of the loan made with [General Fund] or general obligation bond moneys. The rate of interest for portions of the loan made with [non-General Fund], nongeneral obligation bond moneys shall be established by the [agency].

(3) Simple interest shall accrue but be deferred until loan maturity or transfer of the property.

(4) Any other terms and provisions that the agency may deem proper.

Section 5. [*The Preservation Opportunity Fund.*]

(a) A “Preservation Opportunity Fund” is hereby created in the State Treasury. All money in the fund is continuously appropriated to the [department] without regard to fiscal years for the purposes of this Act and for costs incurred in administering the program. The combined administrative expenses of the [department] and the [agency] shall not exceed [5 percent] of the funds deposited in the fund for the purposes of this Act.

(b) The following shall be paid into the fund:

(1) Any money appropriated and made available by the [legislature] for purposes of the fund.

(2) Any money that the [department] or the [agency] receives in repayment of loans from the fund, including interest therefrom.

(3) Any other money that may be made available to the [department] for the purposes of this Act from any other source.

Section 6. [*Interim Repositioning Program.*]

(a) There is hereby created the “Interim Repositioning Program,” the purpose of which is to leverage private capital to increase the funding available to preserve at-risk housing.

(b) The [department] shall administer this program and establish the terms upon which loans may be made consistent with this section.

(c) The [department] shall select a single sponsor through a competitive process. The sponsor shall meet all of the following criteria:

(1) Be a not-for-profit corporation based in this state.

(2) Demonstrate sufficient organizational stability and capacity to carry out the activity for which it is requesting funds, including the capacity to acquire, renovate, or rehabilitate, asset manage and property manage a portfolio of assisted housing developments, and, if applicable, to underwrite, close, and service loans. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department.

(3) Demonstrate a feasible strategy to meet the leveraging requirements of subdivision (g) within [60 days] after being chosen as the sponsor.

(4) Demonstrate past experience in the cost-effective use of public resources.

(5) Submit a detailed business plan as to how the sponsor intends to meet the requirements of this section. The business plan shall include a description of appropriate financial controls, acquisition procedures, underwriting procedures, and internal controls.

(d) The [department] shall give bonus points in the rating and ranking process to an applicant who can demonstrate letters of intent from private entities to provide capital to meet the leverage requirement of this section.

(e) The [department] shall make a loan for a term of not more than [five years] to the project sponsor for the purposes of subdivision (i).

130 (f) Principal and accumulated interest is due and payable upon completion of the term of
131 the loan. The loan shall bear simple interest at a rate of [3 percent per annum] on the unpaid
132 principal balance.

133 (g) Before expending any state funds, the sponsor shall raise at least [\$3] of private
134 capital as equity to match every dollar of Interim Repositioning Program loan proceeds. To be
135 considered private capital, outside funds shall be committed for a term at least equal to the term
136 of the loan made pursuant to this section and available to be used for the purposes of this
137 section. If the sponsor is unable to meet these matching requirements within [60 days] of
138 selection as the sponsor, the loan shall be repaid with accumulated interest to the department,
139 deposited in the fund, and made available to the next highest rated qualified project sponsor
140 identified pursuant to subdivision (c). If, within [180 days], there is no remaining qualified
141 project sponsor available, any unexpended funds shall be made available for the purposes of
142 section 4 of this Act.

143 (h) Funds lent to the project sponsor pursuant to this section and the required private
144 matching funds shall be used to finance up to [20 percent] of the cost of acquiring an assisted
145 housing development.

146 (i) The sponsor shall use Interim Repositioning Program loan proceeds and the required
147 private matching funds for the following purposes:

148 (1) To acquire an assisted housing development in this state for which rent
149 restrictions have expired or are eligible to expire within [five years] of the date that the
150 [department] chooses the sponsor. First priority shall be given to projects for which rent
151 restrictions have expired or are eligible to expire within [two years].

152 (2) To make loans not to exceed a term of [three years] to any entity described in
153 [insert citation] for the acquisition of an assisted housing development for which rent
154 restrictions have expired or are eligible to expire within [five years] of the date the agency
155 chooses the project sponsor. First priority for loans shall be given to projects for which rent
156 restrictions have expired or are eligible to expire within [two years]. The rate of interest on
157 loans made pursuant to this paragraph shall be equal to the lowest feasible rate sufficient to
158 cover the cost of capital to the sponsor.

159 (j) The sponsor, in the event he or she directly acquires an assisted housing
160 development, or the borrower, if he or she has received a loan from the project sponsor pursuant
161 to this section, shall agree to obligate himself or herself and any successors in interest to
162 maintain the affordability of the assisted housing development for households of very low, low,
163 or moderate income for a term of not less than [30 years]. To the extent economically feasible,
164 the development shall be continuously occupied in the approximate percentages that those
165 households who have occupied that development as of the date of acquisition by the purchaser
166 or the approximate percentages specified in existing federal, state, or locally imposed use
167 restrictions, whichever is higher. This obligation shall be recorded at the close of escrow in the
168 office of the county recorder of the county in which the development is located. In addition, the
169 regulatory agreement shall contain provisions requiring the renewal of rental subsidies, if they
170 are available and provided at a level sufficient to maintain the project's fiscal viability. Nothing
171 in this paragraph shall be construed to require the future income restriction of units unrestricted
172 under the new regulatory agreement required by this subdivision.

173 (k) The [department], in its loan agreement with the sponsor, shall establish a schedule
174 for the timely expenditure of funds by the sponsor.

175 (l) The [department] shall select a sponsor for the purposes of this section within [six
176 months] of the date funding becomes available.

177 (m) The [department] may, upon consultation with interested parties, including potential
178 applicants and housing advocates, administer this program through a notice of funding
179 availability that shall not be subject [insert citation].
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181 Section 6. [*Annual Report.*] The [department] shall include in its last annual report
182 submitted to the [Legislature], pursuant to [insert citation], on or before [December 31, 2005],
183 all of the following:

184 (a) A general description of activities undertaken pursuant to this Act.

185 (b) For each project assisted pursuant to this Act, a description of the expiration date of
186 the project's rent restrictions; the name and location of the purchaser; the acquisition price; the
187 number of assisted units preserved; and the level of affordability maintained.

188 (c) If the sponsor for the Interim Repositioning Program subsequently sells any projects,
189 a description of the name and location of the purchaser, the purchase price, and the total
190 transaction costs.

191 (d) With respect to the Interim Repositioning Program, an evaluation of the sponsor's
192 success in leveraging private capital.

193 (e) A comparison of the cost of preserving units under the Preservation Opportunity
194 Program versus the Interim Repositioning Program.

195 (f) If sufficient data exist, a comparison of the cost of preserving units with rent
196 restrictions that have expired or are eligible to expire within [two years] versus units with rent
197 restrictions that are eligible to expire within [three to five years].

198 (g) An overall assessment of the effectiveness of the Preservation Opportunity Program
199 and the Interim Repositioning Program as tools for preserving affordable housing.
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201 Section 7. [*Severability.*] [Insert severability clause.]

202 Section 8. [*Repealer.*] [Insert repealer clause.]
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204 Section 9. [*Effective Date.*] [Insert effective date.]
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