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# HANDBOOK

**Ohio County Commissioners**

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## CHAPTER 82

# HOUSING FINANCE

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### **82.01 INTRODUCTION**

In 1982 the Ohio Constitution was amended to allow the state to assist in providing single family first time home buyer housing and multi-family housing for the elderly. Following the passage of this constitutional amendment, legislation created the Ohio Housing Finance Agency (OHFA) that was responsible for the administration of these programs. Under the terms of this 1982 amendment, local governments were not authorized to assist in providing affordable housing.

This was then changed in 1990 when the Ohio Constitution was again amended when voters approved State Issue I which made housing a public purpose. This eliminated the constitutional barrier and allowed counties and other local units of government to borrow and loan funds to private corporations or builders to produce affordable housing for Ohioans.

State Issue I also allowed the state to provide multi-family housing for a broader range of persons, whereas the 1982 amendment authorized multi-family housing only for the elderly. It also expanded the lending and borrowing authority of the state.

Following the approval of State Issue I on November 6, 1990, the General Assembly began considering legislation to implement the authority granted to the state and local governments by the constitutional amendment. HB 339 was passed and became effective October 10, 1991. SB 131, effective May 15, 1992, also contained provisions related to the new housing power.

The purpose of this chapter is to discuss basic county powers in providing affordable housing under the constitutional amendment and implementing legislation. HB 339 contained the following major provisions:

1. Authorized counties to issue debt to provide or assist in providing housing.  
  
Counties may issue general obligation bonds, multi-family rental housing bonds, and have limited authority to issue single family mortgage revenue bonds (MRB).
2. Authorized counties to use monies in the general fund for housing purposes.
3. Provided for the establishment of housing advisory boards (HAB); specified the purposes of the HAB; and, established the required membership for the board. Unless the county issues general obligation debt or uses tax money for housing purposes, there is no requirement to establish a HAB.
4. Established the State Low and Moderate Income Housing Trust Fund to provide monies for affordable housing. This fund initially received \$5 million of unnamed, unclaimed funds from the Department of Commerce.
5. Included provisions to establish residential prevailing wage rates lower than the general prevailing wage rates, for low income housing projects.
6. Established a new procedure by which the state would allocate its tax exempt, private activity bond volume cap as provided for under federal law.
7. Included a series of miscellaneous provisions dealing with such issues as displacement, relocation assistance, public disclosure of records, and fair housing.

The remainder of the chapter will discuss each of these provisions of law and how counties may become involved in providing affordable housing to its residents.

## **82.02 ISSUANCE OF DEBT**

HB 339 authorized counties to incur debt for housing purposes (ORC 133.51) which became a public purpose with the approval of the constitutional amendment. Counties may issue two primary types of debt as follows:

1. Counties may issue general obligation bonds to provide or assist in providing housing. A general obligation bond pledges the full faith and credit of the county. Few counties will probably issue general obligation bonds for housing.
2. The county may issue two types of revenue bonds that do not pledge the full faith and credit of the county for housing purposes.

- a. Home Ownership - HB 339 designates the Ohio Housing Finance Agency (OHFA) as the sole issuer of bonds for the purpose of financing the purchase of single-family housing. Counties are permitted to issue mortgage revenue bonds (MRB) for other types of home ownership programs, including home improvements, home repair and lease-purchase programs.
- b. Multi-family Rental Housing Bonds -Counties may issue revenue bonds for multi-family rental housing. These bonds generally follow the same procedures used by counties when issuing industrial development bonds (IDB's), except no approval of a community improvement corporation (CIC) is required.

### **82.03 USE OF GENERAL FUND MONEY**

Counties are specifically authorized to use general fund monies for housing purposes (ORC 307.698). This authority is very broad. The authority to use general fund monies for housing could have been granted prior to the passage of the constitutional amendment because the prior constitutional limitation restricted only the ability of a county to loan or borrow money.

### **82.04 ESTABLISHMENT AND MEMBERS OF HOUSING ADVISORY BOARD (HAB)**

County commissioners may establish a housing advisory board (HAB) by resolution. Such a board must be established if the county is spending tax monies or issues general obligation debt. Within 30 days of its first meeting, the Department of Development (DOD) must be notified of the members and formation of the HAB. The board then must issue any reports or information on the activities of the board when requested by DOD. The HAB must include a balanced representation of the following groups from the county:

1. Lenders
2. Non-profit builders and developers of housing.
3. For-profit builders and developers of housing.
4. For-profit builders and developers of rental housing.
5. Realtors.
6. Other persons with professional knowledge regarding local housing needs and fair housing issues.
7. Residents that could receive housing assistance.
8. Metropolitan housing authority.

9. Elected officials of the political subdivisions served by the board.
10. Other groups or individuals that the county commissioners determines are necessary to provide balanced advice on housing plans and programs.

The number of members of the HAB and the length of terms is determined by the county commissioners. Commissioners may compensate members of a HAB.

### **82.05 DESIGNATION OF EXISTING BOARD TO SERVE AS HAB**

Instead of appointing a new HAB, commissioners may designate an existing board, commission, or committee that already exists in the county to serve as the HAB. For example, commissioners could designate a county planning commission, an existing housing related board, or a community improvement corporation.

If the county chooses to use an existing board, commission, or committee, however, the balanced representation requirements previously specified must be met by adding additional members when required. This does not mean that the existing board, that is also designated as the HAB, would have its membership permanently changed. The additional members would sit on the existing board only when it was dealing with housing related matters.

In addition, the additional representatives appointed to an existing board may serve in an advisory capacity to the existing board if it is also designated as the HAB.

### **82.06 OTHER OPTIONS FOR ESTABLISHING HOUSING ADVISORY BOARDS**

The statute (ORC 176.01) provides broad flexibility for cooperative relationships between counties, townships, and municipalities when establishing HAB's. While every county, township, and municipality may establish its own housing advisory board, each may also jointly establish a HAB with one or more contiguous or overlapping political subdivisions. Any two or more counties, for example, may establish a joint HAB.

Another option is for a municipality or township to enter into an agreement with a county that has established its own housing advisory board to receive the services of the county HAB. Whenever a municipal corporation enters into such an agreement to use the county housing advisory board, and the municipal population is or exceeds 50,000, then at least one member of the HAB must be a resident from that municipal corporation. These members are appointed by the county commissioners and selected from a list given by city or village council.

In a similar manner, any municipality or township choosing not to establish its own HAB, may enter into an agreement with any other contiguous municipality or township to receive the services of a HAB that has been established by the city, village, or township.

## **82.07 PURPOSES OF HOUSING ADVISORY BOARD**

**A** HAB must be established before any county issues general obligation bonds for housing or uses tax monies to provide or assist in providing housing. This board is only advisory to the county commissioners. Although the responsibilities of a HAB are very broad and can assist the commissioners in assessing housing needs, it is given statutory authority in the following areas:

1. To receive, review, and advise on comprehensive plans submitted by the county commissioners dealing with the development and maintenance of affordable housing. This could be a plan larger counties must prepare under the new federal housing law, commonly referred to as a CHAS (comprehensive housing affordability strategy); for smaller counties, the state CHAS that is prepared by DOD; a community housing investment strategy (CHIS); or, another plan prepared by the county. Commissioners may adopt a plan for a period not to exceed five years.
2. To receive, review, and advise on written descriptions of proposed projects to be funded with general obligation bonds or tax money prior to the time commissioners make the final commitment to issue bonds or spend tax money.
3. To receive from county commissioners a fair housing impact statement analyzing the impact of a project on housing patterns and any conclusions reached before the county issues general obligation bonds.
4. To receive from county commissioners proposing to issue general obligation bonds an affirmative marketing plan. This plan is to detail efforts to encourage persons disadvantaged by discrimination or others who would normally not be expected to apply for housing at the proposed location to participate.
5. To perform such other advisory functions related to county housing program that the commissioners request.

The HAB is only advisory to the county commissioners. No approval is required before the county may spend tax money or issue general obligation bonds for housing. There is no requirement that the HAB be involved in any multi-family rental or MRB issuance, however, such involvement makes sense.

The HAB is to advise the county commissioners in the following areas:

1. To insure the project or program is consistent with the county designated comprehensive plan for the development and maintenance of housing. This could include a CHAS or a CHIS.

2. The extent to which households may be displaced and may need relocation assistance when general obligation bonds or tax monies are involved in a program or project. For multi-family rental housing, DOD must develop anti-displacement regulations that HAB's use as a guideline.
3. To advise on the length of time a project will remain affordable to any targeted income group when general obligation bonds or tax money is to be used. For multi-family rental housing, DOD must adopt long-term affordability regulations that can be used as a guideline.
4. To advise regarding the extent any lending program is available under similar terms from private lenders, and the terms and conditions of the private lending program.

For more details concerning the functions and responsibilities of the HAB see the following sections that will detail the process required to issue general obligation bonds or make a final commitment to spend tax monies (ORC 176.10(B) and 176.04(D)).

## **82.08 COMMISSIONER PARTICIPATION IN NON-PROFIT HOUSING CORPORATIONS**

In many counties non-profit corporations are actively involved in programs related to low and moderate income housing. County commissioners, in counties under one million population, may create and participate in two types of non-profit housing corporations, an administrative non-profit and a production non-profit.

The purpose of an administrative non-profit (ORC 176.011(A)(1)) is to receive funds that are then expended, granted, loaned, or invested for housing purposes. An administrative non-profit may not be organized for the purposes of acquisition, construction, or rehabilitation of housing. The purpose of such an organization is to assure that funds are being used efficiently. It also coordinates the use of funds with other local governments or housing organizations. On the other hand, a production non-profit (ORC 176.011(A)(2)) is organized to acquire, construct, or rehabilitate housing.

County commissioners may establish and serve on the board of either type of non-profit. When organizing the board of a county created production non-profit, however, no more than one-third of the members of the board may be elected officials or their appointees. County commissioners may also serve on the board of an existing non-profit, such as a community action agency, that is involved in housing production.

If either type of non-profit receives monies from political subdivisions for housing purposes, not more than 15 percent of these funds can be used for administrative and salary purposes of the non-profit. Both types of county created non-profits are public bodies for the purpose of the Sunshine Law, and receives advice from the HAB.

A county may provide funds to either type of non-profit. Such a distribution of funds is exempt from the general conflict of interest provisions of Ohio law. Under a county created

production non-profit, however, housing construction and rehabilitation is defined as construction by a political subdivision. As such, a county created production non-profit, is not entitled to preferential prevailing wage provisions that apply to other non-profits that were not created by elected officials. If commissioners participate on the board of an existing non-profit, including a community action agency, that the county did not create, the preferential prevailing wage rules apply to housing projects.

## **82.09 PROCEDURES TO ISSUE GENERAL OBLIGATION BONDS OR SPEND GENERAL FUND MONEY**

When issuing general obligation bonds or spending money raised by taxation for affordable housing for low-moderate income families all of the following requirements must be met:

1. The county must establish, designate, or enter into an agreement to obtain the services of a HAB.
2. At least 30 days prior to the appropriation of any money or the issuance of general obligation bonds, a plan must be submitted by the county commissioners to the HAB. This is the comprehensive plan for the development and maintenance of affordable housing, and could be a state or county CHAS or CHIS.
3. The HAB must receive a written description of how the general obligation bonds or tax monies will be spent. Fifteen days must elapse during which the HAB will review the written description and then advise the commissioners. If the project or program is not consistent with the plan, an amendment to the comprehensive plan for the development and maintenance of affordable housing (CHAS or CHIS) may be required. Instead of submitting a written description for each project, a county that is using general fund money may submit, prior to the time the annual appropriation measure is adopted, one written description for the entire year.

Finally, when issuing general obligation bonds the commissioners must also:

1. Analyze the impact of the project on existing housing patterns.
2. Submit to the HAB a fair housing statement summarizing the above analysis and the conclusion from that analysis.
3. Submit to the HAB a plan for affirmative marketing to persons regardless of marital status who are members of groups that may be discriminated against on the basis of race, gender, religion, handicap, national origin, ancestry, children or other similar causes or who would traditionally not be expected to apply for housing at the location benefiting from the proceeds of the bonds.

The issuance of general obligation bonds may be for a period not to exceed 40 years and generally follow the requirements of the Uniform Bond Law. Such bonds pledge the full faith and credit of the county. The advice of bond counsel is essential.

## **82.10 MULTI-FAMILY RENTAL AND MORTGAGE REVENUE BONDS**

Counties may also issue multi-family rental bonds and mortgage revenue bonds (MRB) for housing. These bonds do not pledge the full faith and credit of the county. They are similar to the issuance of industrial development bonds (IDB) that many counties have issued to promote economic development through a community improvement corporation. The issuance of these bonds falls under the private activity bond volume cap that will be explained in the next section.

Multi-family rental revenue bonds for the elderly and single family mortgage revenue bonds (MRB's) have been issued by the Ohio Housing Finance Agency (OHFA) since 1983. As discussed in the introduction of this chapter the 1982 amendment to the Ohio Constitution was followed by the adoption of Chapter 175 of the Revised Code which authorized the issuance of these types of bonds for housing. The adoption of State Issue I in 1990 followed by the approval of HB 339 in 1991 now permits counties to issue multi-family rental revenue bonds.

Pursuant to federal law there are requirements that the tenants of these multi-family projects meet certain income guidelines. Specifically, 20 percent of the families must have incomes not exceeding 50 percent of the area median income. Alternatively, 40 percent of the tenants must have family incomes not exceeding 60 percent of the area median income. There are, however, no longer age limitations. These income limitations, together with other tax law changes adopted by Congress in 1986 which were not favorable to multi-family housing, have together limited the interest in multi-family rental housing production in Ohio.

MRB's are issued to provide lower cost mortgage monies for purchasers and owners of single family residences. Federal law defines a single family residence as a one to four unit building. There are numerous federal tax law qualifications and restrictions which apply to MRB's but they are too voluminous and complicated to discuss here.

HB 339 authorizes the issuance of MRB's utilized for the purpose of providing funds to homeowners from home improvement, repair, and lease purchase. Generally, these loans would be secured by second mortgages on the residence being improved. As a result, MRB's are generally supported by additional collateral or a credit enhancement.

## **82.11 PRIVATE ACTIVITY BOND VOLUME CAP**

In 1984 the federal Deficit Reduction Act placed a limit on the total amount of private activity tax exempt debt that could be issued within any state. Congress had become concerned about well publicized abuses concerning the issuance of this type of debt which



reduced revenue to the federal treasury because such bonds were exempt from federal taxation. Private activity debt is a complex subject, but include the following types of bonds:

1. Mortgage revenue bonds (MRB)
2. Industrial development bonds (IDB)
3. Multi-family rental housing bonds
4. Student loan bonds
5. Certain pollution control bonds

Congress initially limited the amount of private activity tax exempt debt that could be issued in any state to an amount not to exceed \$150 per capita. This maximum amount of statewide issuance was gradually reduced, and may not now exceed \$50 per capita. For 1992, Ohio can issue up to \$547 million in private activity debt.

In order to assure this federal requirement was met, Ohio established a program whereby the Governor, by executive order, would allocate the volume cap among the competing uses. DOD was responsible for administering the program.

HB 339 changed the procedure by which the state allocates the volume cap among competing interests in the state. The law establishes a Joint Select Committee on the Volume Cap that now is responsible for allocating the volume cap, and the Director of Development is responsible for the day-to-day administration of the volume cap. To assist in multi-family rental housing, a portion of the volume cap is reserved for this purpose.

## **82.12 STATE HOUSING TRUST FUND**

A Low and Moderate Income Housing Trust Fund (HTF) was established in HB 339. The legislature initially allocated up to \$5 million in unnamed, unclaimed funds to be loaned or granted to assist in housing projects and housing assistance to specifically targeted low and moderate income persons.

Those eligible to participate in HTF programs includes non-profit corporations, private developers, lenders, local governments, and local housing authorities. The fund may be used for grants, loans, loan guarantees, and loan subsidies to governments, but private developers and lenders may not receive grants.

DOD is responsible for administering the fund. DOD and OHFA have the responsibility to develop and implement the HTF programs under rules they promulgate. The HTF advisory committee assists in the development of policies and programs.

DOD is allowed to use five percent for administrative purposes. In addition, the utilization of monies in the HTF are governed by the following statutory guidelines:

1. Forty-five percent of the money must be awarded to non-profit organizations.
2. Not less than 35 percent of the money must be used for activities in rural areas that qualify for the Small Cities Community Development Block Grant (CDBG) program.
3. Not less than 75 percent of the money must benefit persons in a county whose income is 50 percent or less of the median income of the county in which they reside.
4. The remainder of the money must benefit persons in a county whose income is 80 percent or less of the median income of the county.
5. Preference must be given to persons whose incomes are 35 percent or less of the median income of the county.

DOD is charged with the task of determining, on an annual basis, the median income for families and individuals in each county. These grants, loans, loan guarantees and loan subsidies may be used for the following purposes:

1. Acquiring, financing, constructing, leasing, rehabilitating, remodeling, improving, and equipping publicly or privately owned housing.
2. Providing supportive services related to housing and the homeless, including counseling.
3. Providing rental assistance payments or other project operating subsidies that lower rents.
4. Providing to counties, townships, municipal corporations, and non-profit organizations, technical assistance, design and finance services and consultation, and payment of pre-development and administrative costs related to any of the activities listed above.
5. Money in the fund may also be used as matching money for federal funds received by the state, counties, municipal corporations, and townships.

Those receiving HTF grants or loans that will help in providing rental housing projects must reasonably ensure that the project will remain affordable for the life of the project, or 30 years, whichever is longer. Those receiving the grants and loans must also create a program that will assist those who may be displaced as a result of a HTF project.

Finally, the legislation creates a permanent Housing Trust Fund Advisory Committee to assist DOD and OHFA. In addition, a temporary committee was established to make recommendations on how to permanently fund the HTF after the initial infusion of funds is exhausted.

### **82.13 RESIDENTIAL PREVAILING WAGES**

Because the cost of labor is a significant cost in producing housing, the prevailing wage issue was a major concern when the legislature enacted HB 339. Counties often complain that prevailing wage rates significantly increase the cost of public improvement projects. Housing advocates also argued that many of the benefits of the new housing initiatives would be lost if the construction had to comply with prevailing wage rates. As a result, the law now allows for lower residential prevailing wage rates.

The integrity of the basic prevailing wage law was essentially left in tact. Building trade unions and homebuilders are required to negotiate new residential prevailing wage rates at the local level. If there is no locally negotiated residential rate by July 1, 1992, the Director of Industrial Relations is to establish a residential rate at less than general prevailing wage rates that have been negotiated between management and labor. The director is to establish the residential rate by determining the rate that is the average of contiguous counties that have established residential prevailing wage rates. If no contiguous counties have established residential rates, the average is calculated using the next tier of counties that have established residential prevailing wages through collective bargaining between building trade unions and homebuilders.

The residential prevailing wage applies to any housing project where a private contractor or local unit of government is the builder, if it is financed in whole or in part from state monies, housing trust fund dollars, general obligation bonds, multi-family housing bonds, or county general fund money. Projects include any construction, rehabilitation, remodeling or improvement of housing on single or multiple sites. In addition, the following projects are exempt from all prevailing wage requirements:

1. Projects with fewer than six units developed by a local government or private contractor.
2. Projects with fewer than 25 units developed by non-profit corporations organized under Section 501(C)(3) of the Internal Revenue Code.
3. MRB projects undertaken by local government.
4. Projects sponsored or developed by non-profit corporations where federal funds provide more than 12 percent of the cost of the project. Federal financing includes loans, grants, insurance, or the use of low income housing tax credits.

In addition, the following individuals do not have to be paid prevailing wage rates on housing projects:

1. Qualified volunteers who are working without compensation for non-profit corporations that provide housing to persons whose incomes do not exceed 140 percent of county median income.
2. Persons participating in the human service JOBS program under Section 5101.81 of the Revised Code.
3. Individuals who provide labor in exchange for acquiring homeownership property or who provide labor in place of or to supplement rental payments for the property.

#### **82.14 OTHER RESPONSIBILITIES**

The law also places certain monitoring and reporting requirements on counties that become involved in providing affordable housing. A county must monitor its housing programs to ensure it does not encourage, contribute, or participate in unlawful housing discrimination prohibited under Section 4112.02(H) of the Revised Code (ORC 176.08).

In addition, counties that choose to develop mortgage loan programs under the new housing powers must maintain records relating to the program, and make the records available to public inspection and copying. These counties must update this data quarterly and submit an annual report to the Speaker of the House and President of the Senate (ORC 176.06).