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House BILL NO. 241

INTRODUCED BY Carey

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA COOPERATIVE AFFORDABLE HOUSING ACT; PROVIDING FOR THE CREATION OF COOPERATIVE AFFORDABLE HOUSING CORPORATIONS FOR THE PURPOSE OF PROVIDING AFFORDABLE HOUSING FOR LOW- AND MODERATE-INCOME PERSONS AND HOUSEHOLDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 21] may be cited as the "Montana Cooperative Affordable Housing Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 21], unless the context otherwise requires, the following definitions apply:

- (1) "Cooperative affordable housing corporation" or "housing corporation" means a domestic corporation organized under the provisions of [sections 1 through 21].
- (2) "Cooperative interest" means an ownership interest in a housing corporation evidenced by a membership share.
- (3) "Cooperative property" means real and personal property in this state, including mobile and manufactured homes, owned or leased by a housing corporation for the primary purpose of residential use.
- (4) "Lender" means the following institutional lenders:
 - (a) a federal, state, or local housing finance agency;
 - (b) a bank, savings and loan association, or insured credit union;
 - (c) an insurance company;
 - (d) a pension or profit-sharing fund or trust; or
 - (e) any combination of the lenders in subsections (4)(a) through (4)(d).
- (5) "Limited equity cooperative" means a housing corporation organized pursuant to [section 14].
- (6) "Limited equity formula" means a rule or method for determining the transfer value of a share in a limited equity cooperative.



1 (7) "Low income" means income that is less than or equal to 80% of the median income for the
 2 area, adjusted for family size, in accordance with federal standards generally accepted at the time of
 3 incorporation under [sections 1 through 21] and comparable to standards of the federal department of
 4 housing and urban development in existence on [the effective date of this section].

5 (8) "Member" means a person with a cooperative interest.

6 (9) "Moderate income" means income that is less than or equal to 100% of the median income for
 7 the area, adjusted for family size, in accordance with federal standards generally accepted at the time of
 8 incorporation under [sections 1 through 21] and comparable to standards of the federal department of
 9 housing and urban development in existence on [the effective date of this section].

10 (10) "Proprietary lease" means an agreement with a housing corporation governing a member's right
 11 to occupancy under which a member has an exclusive possessory interest in a unit.

12 (11) "Share loan" means an agreement entered into by a member and a lender to finance the
 13 member's acquisition of the member's cooperative interest.

14 (12) "Subscription agreement" means a written agreement between a prospective member and a
 15 housing corporation for the sale and purchase of a cooperative interest.

16 (13) "Unit" means a portion of the cooperative property leased for exclusive occupancy by a
 17 member under a proprietary lease or leased to a tenant by lease agreement.

18
 19 **NEW SECTION. Section 3. Application.** A corporation may not operate as a cooperative affordable
 20 housing corporation unless it is organized as a nonprofit corporation under Title 35, chapter 2, and elects
 21 to be governed as a housing corporation under [sections 1 through 21].

22
 23 **NEW SECTION. Section 4. Name -- use of term cooperative.** The use of the terms "cooperative
 24 housing", "cooperative apartments", or any variation of those terms in identification of dwelling units is
 25 reserved to cooperative affordable housing corporations organized under [sections 1 through 21]. A foreign
 26 organization complying with the cooperative laws of the state in which it was created is entitled to use the
 27 terms if it has obtained the privilege of doing business in this state.

28
 29 **NEW SECTION. Section 5. Property classification of cooperative interest.** A cooperative interest
 30 is a personal property interest. The possessory interest evidenced by a proprietary lease is a part of and

1 may not be severed from a cooperative interest.

2

3 **NEW SECTION. Section 6. Perfection of security interests in cooperative interests.** (1) Security
4 interests in shares of cooperative affordable housing corporations may be created, perfected, and enforced
5 in the same manner as security interests under Title 30, chapter 9. A lender may perfect a security interest
6 by possession of shares or by any other method under which security interests may be perfected pursuant
7 to Title 30, chapter 9.

8 (2) Upon the request of a secured party, a housing corporation shall note on its books and records
9 the interest of the secured party in a cooperative interest. The request or notation is not required to perfect
10 a security interest in a cooperative interest.

11

12 **NEW SECTION. Section 7. Articles of incorporation -- minimum requirements.** The articles of
13 incorporation of a cooperative affordable housing corporation must contain, in addition to the requirements
14 of Title 35, chapter 2, the following provisions:

15 (1) a statement that the housing corporation has only one class of stock;

16 (2) a statement of restrictions, if any, upon the transfer of shares;

17 (3) the rate of dividend, if any, allocable to membership shares, which may not exceed 6% a year
18 on invested capital;

19 (4) the conditions, if any, under which the housing corporation reserves the right to acquire
20 membership shares;

21 (5) the basis for distribution of assets in the event of dissolution;

22 (6) the method of allocating ownership and voting interests in the housing corporation; and

23 (7) the conditions, if any, under which the housing corporation has a right of first refusal upon a
24 proposed transfer of cooperative interest.

25

26 **NEW SECTION. Section 8. Organizational meeting.** Within 6 months after the first conveyance
27 of a share to a member, a cooperative affordable housing corporation shall conduct an organizational
28 meeting for the purpose of adopting bylaws, electing officers, and transacting any other business that may
29 come before the meeting.

30

1 **NEW SECTION. Section 9. Membership.** (1) A cooperative affordable housing corporation must
2 be organized on a membership basis with capital stock.

3 (2) A housing corporation must have one class of stock and one class of members. The
4 designation, qualifications, requirements, method of acceptance, and incidents of membership must be set
5 forth in the articles of incorporation or bylaws.

6 (3) A member may not transfer membership except as permitted in the articles of incorporation or
7 bylaws.

8 (4) The articles of incorporation or the bylaws may provide for termination of membership and the
9 conditions and terms of termination.

10

11 **NEW SECTION. Section 10. Bylaws -- minimum requirements.** The bylaws of a cooperative
12 affordable housing corporation must contain provisions under which the housing corporation's possessory
13 interest will be pursued in the event of a member's default and the rights of the defaulting member, in
14 accordance with [section 15(2)].

15

16 **NEW SECTION. Section 11. Membership shares -- requirements.** A cooperative affordable housing
17 corporation shall issue shares to its members as evidence of their ownership of a cooperative interest. The
18 shares must be in a form prescribed in the articles of incorporation or bylaws. Restrictions on the transfer
19 of shares must be noted on the face of the certificates representing shares. Membership shares may not
20 be issued and proprietary leases may not be issued under [section 15] before filing articles of incorporation
21 as a housing corporation.

22

23 **NEW SECTION. Section 12. Voting.** (1) Except as provided in subsection (5), the votes in a
24 cooperative affordable housing corporation must be assigned so that each member has one vote.

25 (2) The membership of the housing corporation may elect nonmembers to fill up to one-third of the
26 positions on the board of directors.

27 (3) Voting by proxy may be permitted, subject to the following limitations:

28 (a) proxies must be assigned to members; and

29 (b) a member may vote only one proxy on any question.

30 (4) Absentee voting may be permitted.

1 (5) A housing corporation that is not organized as a limited equity cooperative pursuant to [section
2 14] may adopt in its articles of incorporation or bylaws a voting scheme other than one vote for each
3 member, except that decisions to merge the housing corporation with another entity, to dissolve it, or to
4 amend its articles of incorporation or bylaws must be made on the basis of one vote for each member.

5
6 **NEW SECTION. Section 13. Merger -- consolidation.** A cooperative affordable housing corporation
7 may not consolidate or merge with other than another housing corporation and may not consolidate or
8 merge for the purpose of circumventing [section 14, 16(4), 17, or 20].

9
10 **NEW SECTION. Section 14. Limited equity cooperatives.** A cooperative affordable housing
11 corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing
12 and preserving housing for persons and households of low income and moderate income at the time that
13 they purchase their memberships. In addition to safeguarding this public purpose, a limited equity
14 cooperative must meet the following requirements:

15 (1) The articles of incorporation must require that cooperative interests may not be sold at more
16 than a transfer value determined by a limited equity formula included in the articles. The value must be
17 consistent with the object of maintaining long-term affordability of cooperative interests for persons or
18 households of low income and moderate income.

19 (2) A limited equity formula, once established in the articles of incorporation, may not be amended
20 to make cooperative membership unaffordable for classes of low- and moderate-income persons and
21 households for which the housing corporation was originally incorporated. A housing corporation organized
22 under this section may not reorganize as other than a limited equity cooperative without first dissolving.

23 (3) A limited equity cooperative may not sell all or substantially all of its assets if the sale is
24 intended to circumvent the public purpose of this section.

25 (4) The articles of incorporation must require that the housing corporation has the first right to
26 repurchase a member's cooperative interest and must require that the total distribution of capital to a
27 member may not exceed the transfer value.

28 (5) The articles of incorporation must require that upon dissolution of the housing corporation any
29 assets remaining after retirement of corporate debts and distribution to members must be distributed to a
30 charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended,

1 a public agency, or another limited equity cooperative whose formula for determining transfer value is no
2 less restrictive than that of the housing corporation being dissolved.

3 (6) The articles of incorporation must require that a sublease of a unit may not require monthly
4 payments in excess of 100% of the monthly payments required for the unit in the proprietary lease.

5 (7) At least 80% of a limited equity cooperative's occupied units must be occupied by members.

6 (8) Voting authority may not be assigned to nonresidents, except for any assignment as security
7 for a share loan or as security for a loan for construction, acquisition, or permanent financing of cooperative
8 property.

9

10 **NEW SECTION. Section 15. Proprietary lease.** Each member of a cooperative affordable housing
11 corporation is entitled to receive from the housing corporation a written proprietary lease that must contain
12 the following:

13 (1) a provision that the collateral for a loan against the member's cooperative interest is in the
14 nature of a personal property security interest and any default of the loan entitles the lender to treat the
15 default in the same manner as a default of a loan secured by personal property;

16 (2) a description of the housing corporation's possessory remedy in the event of default. Good
17 cause is required for the termination of the right of occupancy. Good cause includes nonpayment of loans,
18 fees, costs, or assessments pertaining to the cooperative interest or a material violation of the bylaws,
19 rules, or proprietary lease that continues following reasonable notice and opportunity to cure the alleged
20 material violation.

21 (3) provisions for determining maintenance and carrying charges for the unit.

22

23 **NEW SECTION. Section 16. Offering of cooperative interests and subscription agreements --**
24 **disclosure required.** (1) A person or entity offering to sell cooperative interests shall provide to a
25 prospective purchaser, prior to the execution of a subscription agreement by the purchaser, a copy of the
26 proposed or adopted articles of incorporation and bylaws of the cooperative affordable housing corporation,
27 a subscription or sales agreement, a proposed proprietary lease, and the most current corporate financial
28 statements, if any exist.

29 (2) The subscription agreement must contain provisions:

30 (a) detailing the cost of acquisition of a cooperative interest, the rights and privileges of

1 membership in the housing corporation, and the terms and conditions of occupancy of a unit of the housing
2 corporation;

3 (b) detailing the risks of acquisition of a cooperative interest, including risks resulting from failure
4 of all units to be occupied;

5 (c) for cancellation of the agreement by either party;

6 (d) detailing conditions, if any, under which the subscription agreement is subordinated to other
7 agreements or otherwise encumbered; and

8 (e) containing a legally sufficient description of the property.

9 (3) A subscriber or purchaser has the right to cancel the subscription agreement without penalty
10 upon provision of written notice to the offeror within 10 days of signing the agreement. In the event of
11 a cancellation, all money paid by the subscriber or purchaser must be returned to the subscriber or
12 purchaser by the offeror within 14 days of receipt of the notice of cancellation. The offeror shall inform
13 the subscriber or purchaser in writing of the right of cancellation.

14 (4) A violation of this section constitutes a violation of Title 30, chapters 1 and 2, regulating
15 consumer protection and unfair trade practices.

16
17 **NEW SECTION. Section 17. Proprietary lease dissolution.** By a vote of at least 80% of its
18 members, or a larger percentage if specified in the articles of incorporation or bylaws, a cooperative
19 affordable housing corporation may vote to dissolve and terminate its proprietary leases.

20
21 **NEW SECTION. Section 18. Loans.** Any lender is authorized to make loans secured by shares in
22 a cooperative affordable housing corporation, including limited equity cooperatives, upon the same terms
23 and with the same limitations as other consumer and residential loans.

24
25 **NEW SECTION. Section 19. Net income -- apportionment.** (1) Subject to subsection (2), the
26 board of directors of a cooperative affordable housing corporation may apportion annually the remainder
27 of its net income in one or more of the following ways:

28 (a) as a reserve fund for the general operation of the housing corporation; or

29 (b) as a dividend not to exceed 6% a year on invested capital.

30 (2) This section does not prevent a housing corporation from disposing of its net income by

1 reducing the cost of facilities or services or by applying the net income otherwise for the common benefit
2 of its members.

3

4 **NEW SECTION. Section 20. Nondiscrimination.** Title 49, chapter 2, applies to all cooperative
5 affordable housing corporations in this state.

6

7 **NEW SECTION. Section 21. Property tax provisions.** (1) Without limiting the eligibility of
8 members of other corporations or unincorporated associations that provide housing on a cooperative basis
9 for tax relief, a member of a cooperative affordable housing corporation is eligible for any relief afforded
10 to property taxpayers under law.

11 (2) The provisions of Title 70, chapter 32, part 2, apply to interests in housing corporations,
12 notwithstanding characterization of cooperative interests as personal property.

13

14 **NEW SECTION. Section 22. Codification instruction.** [Sections 1 through 21] are intended to be
15 codified as an integral part of Title 35, chapter 2, and the provisions of Title 35, chapter 2, apply to
16 [sections 1 through 21].

17

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0241, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act, known as the Montana Cooperative Affordable Housing Act, which provides for the creation of cooperative affordable housing corporations whose purpose is to provide affordable housing for low-income and moderate-income households.

ASSUMPTIONS:

1. The Executive present law base budget serves as the starting point for determining any fiscal impact due to this bill.
2. The Department of Commerce (DOC) does not have sufficient information to determine fiscal impact at this time.
3. The office of the Secretary of State will receive filings and fees from a minimal number of new non-profit corporations. The office estimates it will be able to absorb this increased workload within its present law budget.

FISCAL IMPACT:

None.

Dave Lewis 1-23-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William Carey 1/24/95
WILLIAM CAREY, PRIMARY SPONSOR DATE

Fiscal Note for HB0241, as introduced

HB 241