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H.216

Introduced by Representatives Stevens of Waterbury, Bissonnette of
Winooski, Botzow of Pownal, Burke of Brattleboro, Christie of
Hartford, Clarkson of Woodstock, Conquest of Newbury,
Courcelle of Rutland City, Deen of Westminster, Donovan of
Burlington, Edwards of Brattleboro, Ellis of Waterbury,
Emmons of Springfield, French of Shrewsbury, French of
Randolph, Hooper of Montpelier, Keenan of St. Albans City,
Kitzmiller of Montpelier, Klein of East Montpelier, Larson of
Burlington, Lorber of Burlington, Macaig of Williston, Marek
of Newfane, McCullough of Williston, Moran of Wardsboro,
Mrowicki of Putney, O'Brien of Richmond, Pearson of
Burlington, Poirier of Barre City, Ram of Burlington, Shand of
Weathersfield, Sharpe of Bristol, South of St. Johnsbury,
Sweaney of Windsor, Taylor of Barre City, Weston of
Burlington, Wilson of Manchester, Wright of Burlington and
Young of Albany

Referred to Committee on

Date:

Subject: Municipal and county government; housing authorities; publicly
assisted housing

1 Statement of purpose: This bill proposes to require that the owner of a
2 publicly assisted housing project who wishes to sell the project or terminate a
3 subsidy contract provide notice to the housing project's tenants and the
4 Vermont housing finance agency and allow them the opportunity to submit an
5 offer to purchase the development.

6 An act relating to preserving federally assisted affordable housing

7 It is hereby enacted by the General Assembly of the State of Vermont:

8 Sec. 1. FINDINGS

9 The general assembly finds that:

10 (1) There exists a serious shortage of decent, safe, and energy efficient
11 rental units available for low income Vermonters. Many Vermonters are
12 denied access to decent housing because they are unable to meet the high cost
13 of rent. Rising housing costs in Vermont force low income households to live
14 in unsafe, substandard rental units; to spend an unreasonably high percentage
15 of their income on rent thereby reducing their ability to afford other
16 necessities; or to become homeless. The inadequate supply of decent, safe,
17 energy efficient, and affordable housing endangers public health and
18 jeopardizes public safety, the general welfare, and the good of the state.

19 (2) Vermonters living in many of the 2,600 at-risk rental units in the
20 state may be threatened with displacement from their homes if the private

1 owner terminates affordability restrictions. The loss of privately owned,
2 subsidized, and federally assisted housing in a time of limited public resources
3 would inflict unacceptable harm on current tenants and would precipitate a
4 crisis in the supply of rental housing available and affordable to low income
5 Vermonters.

6 (3) There is a compelling need to preserve the affordability of rental
7 housing units for low and moderate income Vermonters in order to prevent
8 their displacement and to ensure an adequate supply of affordable housing in
9 the state.

10 Sec. 2. PURPOSE

11 The purpose of this act is to provide incentives for owners of assisted
12 housing to renew affordability restrictions, to protect tenants from
13 displacement, and to give tenants through an eligible entity the opportunity to
14 purchase assisted housing and renew affordability restrictions.

15 Sec. 3. 24 V.S.A. chapter 116 is added to read:

16 CHAPTER 116. PUBLICLY ASSISTED HOUSING

17 § 4201. DEFINITIONS

18 For purposes of this chapter:

19 (1) "Affordability restriction" means a limit on rents that an owner may
20 charge for occupancy of a rental unit in a publicly assisted housing

1 development or a limit on tenant income for persons or families seeking to
2 qualify for admission to a publicly assisted housing development.

3 (2) “Agency” means the Vermont housing finance agency.

4 (3) “Comparable housing” means housing that is safe, sanitary, and in
5 compliance with all local and state housing codes, and is equivalent to the
6 dwelling in which the tenant currently resides in regard to the following:
7 apartment size; range of rent; kitchen and bathroom facilities; special facilities
8 for the disabled; neighborhood desirability; school facilities; and area.

9 (4) “Department” means the department of economic, housing and
10 community development.

11 (5) “Elder tenant” means a tenant who is 62 years of age or older.

12 (6) “Low income” means a household income of not more than 80
13 percent of the area median income, adjusted for household size, as periodically
14 determined by the U.S. Department of Housing and Urban Development.

15 (7) “Owner” means a person, firm, partnership, corporation, trust
16 organization, limited liability company, or other entity or its successors and
17 assigns that holds title to publicly assisted housing.

18 (8) “Prepayment” means the payment in full or the refinancing of a
19 government-insured or government-held mortgage loan indebtedness prior to
20 the original maturity date; the voluntary cancellation of mortgage insurance on
21 a publicly assisted housing development; or the payment in full of a

1 government contract which would have the effect of removing either the
2 affordability restrictions applicable to the publicly assisted housing or a
3 requirement to renew any affordability restrictions.

4 (9) "Preserve affordability" means to make reasonable and diligent
5 actions to retain, renew, or secure subsidies in order to maintain at least the
6 same number of units affordable to low and very low income households.

7 (10) "Publicly assisted housing" means rental housing assisted under
8 any of the following programs:

9 (A) New construction, substantial rehabilitation, moderate
10 rehabilitation, property disposition, and loan management set-aside programs
11 or project-based rental assistance under Section 8 of the United States Housing
12 Act of 1937, 42 U.S.C. § 1473f.

13 (B) Section 202 of the Housing Act of 1959, 12 U.S.C. § 1701q.

14 (C) Section 811 of the Cranston-Gonzalez National Affordable
15 Housing Act, 42 U.S.C. § 8013.

16 (D) Below Market Interest Rate Program under Section 221(d)(3) of
17 the National Housing Act (12 U.S.C. § 17151(d)(30)).

18 (E) Section 236 of the National Housing Act, 12 U.S.C. § 1715z-6.

19 (F) Rent supplement assistance under Section 101 of the Housing and
20 Urban Development Act of 1965, 12 U.S.C. § 1701s.

21 (G) HOME Investment Partnership Act, 42 U.S.C. § 12721 et seq.

1 (H) Section 514, 515, or 521 of the Housing Act of 1949, 42 U.S.C. §
2 1490a.

3 (I) Federal low income housing tax credit program under Section 42
4 of the Internal Revenue Code of 1986, 26 U.S.C. § 42.

5 (J) State tax credits pursuant to 32 V.S.A. § 5930u.

6 (K) Multi-family housing under the Neighborhood Stabilization
7 Program, Title III of Subdivision b of the Housing and Economic Recovery
8 Act of 2008 (HERA), Public Law 110-289.

9 (L) Multi-family housing under the Community Development Block
10 Grant (CDBG) program.

11 (M) The National Housing Trust Fund, HR 3221, Title 1, Subtitle B,
12 Section 1338 of the Federal Housing Finance Regulatory Reform Act of 2008,
13 Public Law 110–289.

14 (11) “Qualified entity” means a partnership, nonprofit or for-profit
15 corporation, trust, organization, limited liability company, or other entity that
16 the agency has determined to have demonstrated expertise and experience
17 developing permanently affordable rental housing.

18 (12) “Relocation costs” means the reasonable costs of moving into
19 comparable housing, including moving expenses, utility connection fees, and
20 rental and damage deposits.

1 (13) “Tenant with disabilities” means a tenant who has a physical or
2 mental disability which restricts one or more major life activities, including
3 caring for one’s self, performing manual tasks, walking, seeing, hearing,
4 speaking, breathing, learning, or working.

5 (14) “Termination” means:

6 (A) The expiration or early termination of a publicly-assisted rental
7 housing development’s participation in a federal subsidy program; or

8 (B) The expiration or early termination of a publicly-assisted rental
9 housing development’s affordability restrictions as described in Sec. 42(g) of
10 the Internal Revenue Code when that expiration or early termination results in
11 an increase in rent, a change in the form of a subsidy from project-based to
12 tenant-based, or a change in the use from assisted-housing development to a
13 use other than rental housing.

14 (15) “Very low income” means a household income of not more than 50
15 percent of the area median income, adjusted for household size, as periodically
16 determined by the U.S. Department of Housing and Urban Development.

17 § 4202. HOUSING COVERED; EXEMPTIONS

18 (a) This chapter applies to all publicly assisted housing which is privately
19 owned and not subject to a perpetual housing subsidy covenant approved by
20 the Vermont housing and conservation board or the Vermont housing finance
21 agency.

1 (b) This chapter shall not apply to publicly assisted housing whose owner
2 has:

3 (1) Preserved affordability restrictions for a period of at least five years;

4 or

5 (2) Signed and recorded in the municipal land records a perpetual
6 housing subsidy covenant, mortgage, preservation agreement, or right of first
7 refusal or option to purchase which has been approved by the Vermont housing
8 and conservation board or the Vermont housing finance agency.

9 § 4203. OWNER'S NOTICE OF INTENT TO SELL OR TERMINATE

10 (a) The owner of publicly assisted housing shall not sell or otherwise
11 dispose of the housing, complete a prepayment, or complete a termination
12 unless the owner has:

13 (1) Given notice as required by this section.

14 (2) Complied with all applicable state and federal laws or rules.

15 (3) Negotiated in good faith to sell the housing project to a qualified
16 entity.

17 (4) Obtained a certificate of compliance from the agency.

18 (b) The owner shall give notice of intent to sell or terminate to:

19 (1) All the tenants and the tenant organization, if any.

20 (2) The clerk or chair of the legislative body of the municipality in
21 which the housing project is located.

1 (3) The agency.

2 (c) The owner shall give a written notice of the intent to sell or terminate to
3 each tenant as follows:

4 (1) 24 months' notice to elder tenants and tenants with disabilities.

5 (2) 12 months' notice to low income tenants.

6 (3) six months' notice to all other tenants, or if federal law requires a
7 longer notice period, then the notice period required under the federal law.

8 (d) The notice shall provide the address of the publicly assisted housing;
9 the owner's name and address; notification that the affordability restrictions
10 may terminate and the date of the termination; and any other information
11 required by the agency.

12 (e) An owner may serve notice by delivering the notice by certified or
13 registered mail, return receipt requested or, if to a tenant, by hand-delivering
14 the notice to the tenant or an adult member of the tenant's household.

15 (f) The notice requirements shall not be affected by the status of an offer,
16 purchase, or contract of sale under section 4204 or 4205 of this chapter.

17 § 4204. OFFER OF SALE TO QUALIFIED ENTITY

18 (a) Between 90 and 120 days after giving the notice required by section
19 4203 of this title, the owner shall, before selling, leasing, completing
20 prepayment or termination, or otherwise disposing of the housing, provide the

1 agency and a qualified entity approved by the agency in consultation with the
2 tenants an offer to sell the property.

3 (b) The offer shall contain the essential terms of the sale, including, at a
4 minimum, the following: the sales price; the appraisal report; the terms of
5 seller financing, if any, including the amount, the interest rate, and the
6 amortization rate; the terms of assumable financing, if any, including the
7 amount, the interest rate, and the amortization rate; and any proposed
8 improvements to the housing to be made by the owner in connection with the
9 sale. The sales price shall not be greater than the fair market value of the
10 property as determined in accordance with appraisal guidelines issued by the
11 agency. The appraisal report shall be reviewed and approved by the agency.

12 (c) Within 60 days of receiving the offer of sale, the qualified entity shall
13 notify the owner in writing whether it intends to purchase the housing.

14 (d) The owner shall comply with any reasonable request by the qualified
15 entity for documents related to the housing, including: a floor plan of the
16 housing; itemized lists of monthly operating expenses; capital expenditures in
17 each of the two preceding calendar years and deferred maintenance costs; the
18 amount of project reserves; utility consumption rates; copies of financial and
19 physical inspection reports filed with state, federal, or local agencies; the most
20 recent list of rents; a tenant list; a list of vacant units; and a statement of the
21 vacancy rate for each of the two preceding calendar years. The owner shall

1 make documents available during normal business hours at the owner's
2 principal place of business within 15 days of receiving a request.

3 § 4205. RIGHT TO PURCHASE BY QUALIFIED ENTITY

4 (a) The qualified entity shall provide the owner with an offer to purchase
5 the housing within 90 days of notifying the owner of its intent to purchase.
6 The offer shall include a purchase contract containing the sales price and terms
7 agreed to by the parties or the sales price and terms determined pursuant to
8 subsection (b) of this section.

9 (b) If the parties are unable to agree to a sales price within 60 days of the
10 90-day period specified in subsection (a) of this section, the sales price shall be
11 the fair market value of the housing as determined by the appraisal guidelines
12 issued by the agency and two independent appraisers qualified to appraise
13 multi-family housing. One appraiser shall be selected and paid by the owner
14 and the other selected and paid by the qualified entity. If the appraisers fail to
15 agree on the fair market value, the owner and the qualified entity shall either
16 jointly select and pay a third appraiser, whose appraisal shall be binding, or
17 agree to the average of the two appraisals. All appraisers shall be Member of
18 the Appraisal Institute (MAI) certified. The determination of the sales price
19 shall be completed within the 90-day period specified in subsection (a) of this
20 section.

1 (c) The qualified entity shall agree to close the sale within 180 days from
2 the date that the parties sign the contract to purchase. The agency shall
3 collaborate with the qualified entity to purchase the rental housing in order to
4 preserve its affordability.

5 § 4206. RELEASE OF OWNER FROM OBLIGATIONS; TERMINATION

6 FEE

7 If the qualified entity fails to provide notice pursuant to section 4203 or fails
8 to meet the requirements of section 4204 of this chapter, the owner is released
9 from all requirements and obligations under this subchapter. If the agency
10 determines that the owner has negotiated in good faith with the qualified entity,
11 the agency shall issue the certificate of compliance and the owner may enter
12 into an agreement to sell the property to a third party. After the expiration of
13 the notice periods required by this subchapter, the owner shall file the
14 certificate of compliance in the land records of the municipality in which the
15 property is located and may convey the property to the third party purchaser
16 subject to sections 4207 and 4209 of this chapter, provided that the terms and
17 conditions of the sale are not more favorable to the third party purchaser than
18 those contained in the owner's offer to the qualified entity.

19 (b) If the owner prepays a mortgage held by the agency without the
20 agency's consent terminates affordability restrictions or sells the project, the
21 owner shall pay the Vermont housing and conservation board a termination fee

1 of four percent of the fair market value of the project as determined by a
2 qualified appraiser approved by the agency. The termination fee shall be paid
3 prior to the owner recording the prepayment, termination, or sale in the
4 municipal land records.

5 (c) The proceeds from the termination fee shall be used by the Vermont
6 housing and conservation board to provide grants and loans to qualified entities
7 to further the purposes of this chapter, including the protection of lower
8 income residents of publicly assisted housing from displacement, the
9 ownership of publicly assisted housing by qualified entities, and the production
10 of perpetually affordable housing units for low and very low income residents.

11 (d) The termination fee shall not apply to publicly assisted housing
12 exempted under this chapter.

13 § 4207. EXEMPTIONS FOR CERTAIN TRANSACTIONS

14 This chapter shall not apply to the following:

15 (1) Government takings by eminent domain or a negotiated purchase in
16 lieu of a taking by eminent domain.

17 (2) An involuntary sale pursuant to a foreclosure.

18 (3) A deed in lieu of foreclosure.

19 (4) A proposed sale of a publicly assisted project to an affiliate of the
20 owner that is not a termination.

1 (5) A proposed sale to a qualified entity that signs a perpetual housing
2 subsidy covenant approved by the Vermont housing and conservation board or
3 the Vermont housing finance agency.

4 § 4208. CIVIL ACTION AGAINST OWNER

5 The tenants in the affected assisted housing project or the agency may bring
6 a civil action against an owner who violates this chapter. If the affected
7 tenants or the agency is the prevailing party in a civil action against the owner,
8 the owner shall also pay costs and reasonable attorney's fees. An owner found
9 to have violated this subchapter shall, in addition to any other damages
10 allowable, pay a civil penalty of \$2,000.00 to each tenant household affected
11 by the violation.

12 § 4209. RENT STABILIZATION; GOOD CAUSE EVICTION;

13 RELOCATION ASSISTANCE

14 (a) For the notice periods specified in section 4203 of this chapter, the
15 owner shall make every reasonable effort to obtain enhanced Section 8
16 vouchers or other rental assistance for low and very low income tenants. The
17 rent for a dwelling unit occupied by a tenant who does not receive rental
18 assistance shall not be increased more than once annually and by no more than
19 the increase in the Consumer Price Index. During this period, a tenant shall
20 not be evicted or involuntarily displaced from the dwelling except for good
21 cause related to tenant fault. A notice of rent increase shall be provided to all

1 affected tenants and the agency at least 120 days before the increase takes
2 effect.

3 (b) If the tenant's claim that a proposed rent increase is greater than the
4 increase in the U.S. Consumer Price Index for all Urban Consumers, Housing
5 Component, published by the U.S. Bureau of Labor Statistics in the periodical
6 "Monthly Labor Review and Handbook of Labor Statistics" as established by
7 the agency, and if, within 15 business days after receipt by the agency of the
8 notice required by section 4203 of this chapter, a tenant files with the agency
9 and the owner a written statement objecting to the proposed rent increase, the
10 agency shall determine whether the rent increase is consistent with this section.

11 (c) The owner may offer a tenant assistance in locating comparable housing
12 as determined by the agency. If the tenant acquires comparable housing as a
13 result of the owner's efforts, the tenant may be required to vacate the premises
14 on 90 days' notice.

15 (d) The owner shall pay the actual documented cost of relocation, not to
16 exceed \$1,500.00, to any tenant entitled to receive notice under section 4203 of
17 this chapter. Relocation costs shall be payable within 10 days after the tenant
18 submits the itemized request in writing to the owner, provided that the
19 relocation costs may be reduced by any rent due by the tenant prior to the date
20 the unit is vacated.

1 § 4210. MORATORIUM ON THE SALE OF PROPERTY, PREPAYMENT,
2 OR TERMINATION OF AFFORDABILITY RESTRICTIONS

3 Unless exempt from the provisions of this subchapter, the owner of
4 publicly assisted housing shall not sell or otherwise dispose of such housing,
5 complete a prepayment, or complete a termination of affordability restrictions
6 before July 1, 2012. Any sale, mortgage prepayment, or termination of
7 affordability restriction in violation of this subchapter shall be null and void.

8 Sec. 4. PRESERVATION PLAN

9 The Vermont housing finance agency and the Vermont housing and
10 conservation board, in consultation with the department of economic, housing
11 and community development and its housing council, shall develop a state
12 rental housing preservation plan to provide financial incentives to the owners
13 of publicly assisted housing to preserve affordability, identify the resources
14 necessary to facilitate the sale of covered projects to qualified entities, and
15 minimize displacement of tenants through the use of federal rental assistance.

16 The Vermont housing finance agency and the Vermont housing and
17 conservation board shall submit this plan to the general assembly on or before
18 January 15, 2012 along with any recommendations.

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on passage.