

# Vermont State Housing Authority



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February 28, 2017

Hon. Helen Head, Chair  
House Committee on General, Housing, and Military Affairs  
Statehouse  
Montpelier, Vermont

Re: Propose Act Pertaining to the Powers of Vermont State Housing Authority

Dear Chairwoman Head:

Our proposed changes to 24 V.S.A. §4005 would expand the powers of the state housing authority to explicitly authorize it to contract in any capacity (that is, as prime contractor, partner, or subcontractor) for the administration of federal housing subsidies and to exercise the general powers of any Vermont non-profit corporation. We believe this change is necessary and prudent (1) to assure the flow of federal rental subsidies for the benefit of low-income Vermonters, and (2) to preserve the efficacy and perhaps the existence of the state housing authority. A more detailed explanation follows.

As in 2012, VSHA seeks the assistance of the Legislature to preserve its hands-on role in the administration of federal project-based rental subsidies. At that time, our role was threatened by HUD's contemplation of awarding the administration contract on a regional basis to housing authorities from other states or their nominally private instrumentalities. With your assistance, the Legislature responded with No. 137 of the 2011 adjourned session. That Act amended 24 V.S.A. §4005 to require that any prime contract for the administration of rental subsidies in Vermont could be administered only by a State public body.

We advised you then that even the new legislation could be threatened by superseding Federal legislation and/or an assertion of federal administrative authority if upheld by the courts. The efficacy of our amended statute was not tested at that time. Ultimately, HUD accepted VSHA's bid to continue to serve as the Statewide Project Based Housing Administrator for Vermont.







Today, however, the issue has again raised its head. Inspired by an unfortunate court decision and asserting economy of scale as its rationale, HUD seems determined to award regional contracts (or perhaps a national contract) for the administration of Section 8 rental subsidies on a "bottom line" basis in accordance with federal procurement law as opposed to the housing-specific Federal Housing Act of 1937, which recognizes the importance of the States in this sensitive area.

While HUD has not acted definitively, the expectation that it will make this drastic break with past practice comes closer to realization as time goes by. Along with all other state Public Housing Authorities, we have been advised to expect a new invitation to bid that is likely to include a regional or national feature on terms that would make individual state applications non-competitive.

For the past year, state public housing agencies from the northeast region, including all of the New England States and New York, have been conferring at administrative and legal levels to devise a collective strategy for meeting the situation in a way that will assure the continuing administration of federal rental subsidies by public entities of the individual States. .

The regional conferees have not settled upon a final strategy, in part because HUD has yet to put forward a concrete invitation to bid. When it does, we believe one arm of the strategy of the Northeast Region will be a lawsuit to assert the primacy of the Federal Housing Act.

However, prudence dictates a multi-pronged approach. We are also exploring ways to form a regional entity or compact that can compete with private contractors. Such an entity or compact might be (a) an agreement for all involved States to act as local subcontractors of one of them to be put forward as the regional contractor, (b) the formation of a new non-profit corporation for the same purpose, or (c) the formation of a contractual joint venture.

As discussed by the regional legal conferees, an issue for each State is the power under its own State authorizing legislation to participate in any joint construct that we may ultimately conclude gives all of us the best chance to continue to serve our respective constituents. Under section 4005 as it stands, it is questionable whether VSHA could agree to operate or to join in the operation of an organization outside of Vermont's borders and whether a non-"State public body" could operate as a prime contractor within the State, even with our cooperation. Our proposed amendment to Section 4005 will allow us to





participate in any of the constructs that may be devised for the general benefit of the States of the region. Note, in particular, that extending our authority to include the general powers of a non-profit corporation would include the explicit authority to participate in a joint venture and to operate outside the State as necessary or convenient in furtherance of our statutory purposes. *See* 11B V.S.A. §3.02 (9), (10), and (16).

Please don't hesitate to let me know if I can provide further assistance.

Respectfully,

VERMONT STATE HOUSING AUTHORITY

Richard Williams, Executive Director

## **AN ACT PERTAINING TO THE POWERS OF THE STATE HOUSING AUTHORITY**

### *SECTION 1:*

24 V.S.A. section 4005 (e) is amended to read as follows:

“(e) Notwithstanding any provision of law, no person, domestic or foreign, shall be authorized to administer allocations of money under 42 U.S. C.A. § 1437a or 1437f or other federal statute authorizing rental subsidies for the benefit of persons of low or moderate income, except:

“(1) a contractor with, or subcontractor of, the State Authority; or

“(2) a State public body authorized by law to administer such allocations.”

### *SECTION 2:*

24 V.S.A. section 4005 (f) is added to read as follows:

(f) In addition to the powers granted by this chapter, the state authority shall have all of the general powers of a non-profit corporation including, but not limited to, those powers enumerated in 11B V.S.A. § 302.