



Gregory J. Swain, County Attorney

MEMORANDUM

To: Council Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Via: Gregory J. Swain, County Attorney /s/

Date: June 21, 2021

Subject: Bill No. 64-21, PILOT Agreement with the Housing Authority of the City of Annapolis

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 64-21. The summary is intended to explain the purposes and legal effects of the Bill.

Background. The primary purpose of the Bill is to approve and authorize the County Executive to enter into an agreement to replace an existing payment in lieu of taxes agreement (“PILOT”) with the Housing Authority of the City of Annapolis (the “Housing Authority”). The Agreement is attached to the Bill as Exhibit A.

The Housing Authority and the County currently are parties to a PILOT Agreement dated April 15, 2009 (the “current County PILOT Agreement”), pursuant to which the Housing Authority is required to make PILOT payments for each of its properties in the amount of \$1.00 to the County. However, the current County PILOT Agreement does not cover a new form of ownership for several of the Housing Authority properties. Therefore, those properties need to be specifically addressed in a new County PILOT Agreement.

Based upon a change in funding by the United States Department of Housing and Urban Development, for some of its properties, a more modern form of ownership has evolved under which the Housing Authority owns the land and third-party developers renovate and own the buildings. The properties must still benefit a designated affordable housing market client base established by income guidelines and involve a fixed number of units for a fixed period of time.

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

Under this form of ownership, the properties are re-financed to allow private ownership in which the public housing authority has an ownership or control interest.

Additionally, the Housing Authority currently has a PILOT with the City of Annapolis (the "City PILOT"), which requires payment of 10% of the shelter rents (as defined in the new PILOT Agreement), half of which is to be remitted to the County. The County is not a party to the agreement with the City.

The parties are seeking to replace the current County PILOT Agreement since the new ownership structure is not contemplated by the current County PILOT Agreement. Additionally, the new Agreement implements the payment structure in place in the City PILOT for certain of the Housing Authority properties so that the payment agreement is directly with the County rather than through the City.

State law. State law exempts properties owned by non-profit housing corporations like the Housing Authority that provide rental housing from County real property taxes, and authorizes the County and the property owner to enter into a PILOT. Md. Code Ann., Tax-Prop., § 7-215; Housing and Community Development, § 12-104(c)(2)(i).

A PILOT is authorized for properties owned under the new form of ownership by State law. Section 7-503(a)(2)(ii) of the Tax-Property Article of the State Code authorizes entry into a PILOT if the real property or improvements constructed or maintained on such real property are owned by a limited partnership for which the Housing Authority is the managing general partner; so long as the owner is engaged in the operation, construction, or management of a qualified low income housing project as defined in the Internal Revenue Code. Additional authority exists in § 6-102 of the Tax-Property Article of the State Code, which provides that when a property is conveyed in a ground lease of less than 99 years to a third party lessee, the lessee is treated like the owner for tax purposes. The law also requires that the PILOT be approved by the "governing body", which is this Council and the County Executive.

Purpose. The main purpose of the Bill is to authorize a new County PILOT Agreement to replace the current County PILOT. The new County PILOT will address the conversions in ownership and control structures for certain Housing Authority properties. It also incorporates the payment structure in the City PILOT for other Housing Authority properties, thereby requiring the Housing Authority to make payment directly to the County, rather than through the City PILOT.

Under the terms of the new County PILOT, the payment will continue to be \$1.00 for most of the Housing Authority's properties. (PILOT, ¶¶ 1.a; 2). The properties include those for which the Housing Authority is the fee simple owner (now or in the future). It also includes any improvements constructed or maintained on such real property owned by a limited partnership for which the Housing Authority is the managing general partner, so long as the limited partnership is engaged in the operation, construction, or management of a qualified low-income housing project, as defined in the Internal Revenue Code. (PILOT, ¶¶ 1.a.i; 2). The \$1.00 payment will also pertain to any of the Housing Authority's properties that are or become subject to a ground lease, as long as the property is used for low income housing (PILOT, ¶¶ 1.a.ii; 2). Additionally, any properties that may, in the future, become subject to the United States Housing and Urban Development

Department's ("HUD") rental assistance demonstration ("RAD") process will be subject to a \$1.00 payment. (PILOT, ¶¶ 1.a.iii; 2).¹

For certain specific properties identified in paragraph 1.b and 3 of the new County PILOT, the payment structure will be the same that it is under the City PILOT. The only change is that payment will be made directly to the County without the need to involve the City. Those properties are Annapolis Gardens and Obery Court, Phases II and III. Specifically, the payments for those properties will be 5% of the shelter rents. (PILOT, ¶¶ 1.b; 3). "Shelter rent" is defined in paragraph 1.c of the PILOT.

The reason these properties will pay more than \$1.00 is a result of discussions with the Housing Authority and based on information indicating that this PILOT payment requirement was considered as part of the financing for the redevelopment of those specific properties and therefore it was already a part of their budget. Under the terms of the new County PILOT, if those properties become subject to the RAD program in the future, their payment will become \$1.00.

The PILOT Agreement further provides that it will be effective retroactive to July 1, 2020 (fiscal year 2021). Because this Agreement has been pending for some time, the parties had originally intended the Agreement to be effective last year. The Agreement will require the payment of the PILOT payments for both fiscal years 2021 and 2022 to be made within 90 days of execution of the new PILOT Agreement.

The new County PILOT also provides that upon execution, the current County PILOT Agreement, as well as any other agreements between the parties pertaining to any PILOT payments are replaced by the new County PILOT.

Section 1 provides for an exemption from County real property taxes for the real properties described in Exhibit A attached to the Bill in accordance with § 7-215 of the Tax-Property Article and § 12-104(c)(2)(i) of the Housing and Community Development Article of the State Code.

Section 2 rescinds the April 15, 2009 PILOT Agreement upon the execution of the new County PILOT Agreement.

Section 3 authorizes the County Executive to enter into the new County PILOT Agreement upon passage of this Bill.

Section 4 provides that the exemptions and PILOT may not take effect until the requirements of § 7-503 of the Tax-Property Article of the State Code, are met, and shall take effect in accordance with the terms of the new County PILOT Agreement.

¹ HUD created the RAD program in order to give public housing authorities a method to preserve and improve public housing properties with a more reliable underlying federal funding source, while ensuring that the units remain permanently affordable to low-income households. Under RAD, like traditional public housing, residents continue to pay no more than 30% of their adjusted income towards rent and utilities. The RAD program maintains the ongoing public stewardship of the converted property through clear rules requiring ongoing ownership or meaningful control by a public or non-profit entity, such as the public housing authority. In short, RAD is a tool for preserving long-term affordable housing by replacing the public housing funding stream with Section 8 subsidy.

Section 5 provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive
Matthew Power, Chief Administrative Officer
Dr. Kai Boggess-de Bruin, Chief of Staff
Peter Baron, Legislative Liaison
Chris Trumbauer, Budget Officer
Karin McQuade, Finance Officer