MISSISSIPPI LEGISLATURE REGULAR SESSION 2011

By: Representative Calhoun

To: Select Committee on Poverty; Ways and Means

HOUSE BILL NO. 1021

AN ACT TO CREATE THE MISSISSIPPI AFFORDABLE HOUSING TRUST FUND MANAGEMENT BOARD; TO PROVIDE THAT MONEY IN THE TRUST FUND SHALL BE MADE AVAILABLE FOR ASSISTING THE DEVELOPMENT, REHABILITATION AND PRESERVATION OF AFFORDABLE HOUSING; TO PROVIDE THAT THE TRUST FUND SHALL BE ADMINISTERED BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO PROVIDE THAT THE MISSISSIPPI AFFORDABLE HOUSING TRUST FUND MANAGEMENT BOARD APPROVE RULES AND REGULATIONS PROPOSED BY THE MISSISSIPPI DEVELOPMENT AUTHORITY, OVERSEE THE MANAGEMENT OF MONIES IN THE TRUST FUND AND APPROVE AWARDS OF TRUST FUND MONIES TO APPLICANTS; TO PROVIDE THAT THE BOARD SHALL BE APPOINTED BY THE GOVERNOR AND ATTORNEY GENERAL; TO CREATE THE MISSISSIPPI AFFORDABLE HOUSING TRUST FUND OVERSIGHT COMMITTEE, A JOINT LEGISLATIVE COMMITTEE APPOINTED BY THE SPEAKER AND THE LIEUTENANT GOVERNOR; TO PROVIDE THAT THE COMMITTEE SHALL SERVE ONLY IN AN ADVISORY CAPACITY TO THE BOARD AND SHALL HAVE NO VOTE ON ANY MATTER WITHIN THE JURISDICTION OF THE BOARD; TO AMEND SECTION 75-76-129, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PORTION OF ALL TAXES, FEES, INTEREST, PENALTIES, DAMAGES, FINES OR OTHER MONIES COLLECTED BY THE DEPARTMENT OF REVENUE UNDER THE GAMING CONTROL ACT SHALL BE DEPOSITED TO THE CREDIT OF THE MISSISSIPPI AFFORDABLE HOUSING TRUST FUND; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) The Legislature hereby finds and declares that there exists in the state a need to assist low-income persons in accessing affordable rental and home ownership housing and to provide for the development, rehabilitation, and preservation of decent, safe, and affordable housing for low-income persons; to revitalize distressed neighborhoods and build healthy, vibrant communities; to leverage additional private investment in state communities and contribute to economic growth through increased housing production, employment and tax revenues. To address these needs, the purposes of this chapter shall be the following:

(a) To fill the growing gap in the state's ability to build affordable rental and ownership housing by encouraging the

dedication of permanent public and private revenue sources to fund additional housing activities.

(b) To promote home ownership for low-income persons, to address homelessness and the prevention of homelessness, and to produce, rehabilitate, and preserve affordable housing throughout the state.

(c) To develop affordable rental housing for low-income persons, in mixed-income settings and in areas with the greatest economic opportunities.

(d) To promote accessible housing for individuals with disabilities, homelessness prevention activities, down payment assistance for low-income home buyers, housing and foreclosure counseling, technical assistance, and capacity building for nonprofit housing organizations.

(2) As used in this act:

(a) "Trust fund" means the Mississippi Affordable Housing Trust Fund.

(b) "State" means the State of Mississippi.

(c) "Low-income individuals and families" means an individual or family that, at the time of initial occupancy of a unit, has a total annual gross household income at or below eighty percent (80%) of the area median income, as adjusted for family size.

(d) "Board" means the Mississippi Affordable Housing Trust Fund Management Board created in Section 4 of this act.

(e) "Area median income" means: (i) for a rural area, the median income for the state, and (ii) for a nonrural area, the greater of the median income for the state or the median income for the applicable metropolitan area or county, all as determined by the United States Department of Housing and Urban Development.

(f) "MDA" means the Mississippi Development Authority.

(g) "Participating jurisdiction" means a local housing trust fund in the state that meets the requirements of Section 8 of this act.

(h) "Very low-income individuals and families" means an individual or family that, at the time of initial occupancy of a unit, has a total annual gross household income at or below fifty percent (50%) of the area median income, as adjusted for family size.

(i) "Extremely low-income individuals and families" means an individual or family that, at the time of initial occupancy of a unit, has a total annual gross household income at or below thirty percent (30%) of the area median income, as adjusted for family size.

(j) "Rural area" means a county outside of a Metropolitan Statistical Area as designated by the United States Office of Management and Budget.

(k) "Nonrural area" means a county inside a Metropolitan Statistical Area as designated by the United States Office of Management and Budget.

(l) "Affordability period" means the period of time during which a housing project must comply with the rental and income restrictions set forth pursuant to this act.

(m) "Committee" means the Mississippi Affordable Housing Trust Fund Oversight Committee created in Section 4 of this act.

SECTION 2. (1) There is hereby created within the State Treasury a special fund to be designated the "Mississippi Affordable Housing Trust Fund," into which shall be deposited funds required to be deposited in the trust fund under Section 75-76-129, money designated for deposit into the trust fund from any source. In addition, there shall be deposited into the trust fund such amounts as may become available under the provisions of this act, including, but not limited to:

(a) All receipts, including dividends, principal and interest repayments attributable to any loans or agreements funded from the trust fund;

(b) All proceeds of assets of whatever nature received by the MDA, and attributable to default with respect to loans or agreements funded from the trust fund;

(c) Any appropriations, grants or gifts of funds or property, or financial or other aid from any federal or state agency or body, local government or any other public organization or private individual made to the trust fund;

(d) Any income received as a result of the investment of monies in the trust fund; and

(e) All fees or charges collected pursuant to this act.

(2) Money in the trust fund shall be made available for assisting the development, rehabilitation, and preservation of affordable housing and for other purposes consistent with this act. The trust fund shall be administered by the MDA, subject to review by the board.

Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse, and any investment earnings on amounts in the fund shall be deposited to the credit of the fund.

SECTION 3. The MDA shall be responsible for the general administration of the trust fund, including, but not limited to, the following duties:

(a) Developing rules and regulations in furtherance of the provisions of this act.

(b) Marketing the trust fund to eligible applicants.

(c) Receiving, reviewing and evaluating proposals for the use of trust fund monies.

(d) Submitting funding recommendations to the oversight board.

(e) Developing annual monitoring reports to ensure that trust fund monies are expended in a manner consistent with this act.

(f) Causing an annual audit of the trust fund in accordance with generally accepted accounting principles (GAAP) by an independent auditor, who shall submit that audit to the board no later than December 31 of the applicable year.

SECTION 4. (1) There is created the Mississippi Affordable Housing Trust Fund Management Board. The board shall consist of eleven (11) members appointed with the advice and consent of the Senate as provided in this section. The Governor shall appoint eight (8) members, two (2) members from each congressional district; and the Attorney General shall appoint three (3) members, one (1) from each Supreme Court district. The initial members of the board shall be appointed to staggered terms as follows:

(a) Of the Governor's appointments, two (2) members shall be appointed for a term of two (2) years, two (2) members shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of four (4) years and two (2) members shall be appointed for a term of five (5) years.

(b) Of the Attorney General's appointments, one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for a term of three (3) years and one (1) member shall be appointed for a term of four (4) years.

(2) At the expiration of the terms of the initial members, all members of the board shall be appointed in the same manner and from the same districts prescribed in subsection (1) of this section, for terms of five (5) years from the expiration of the previous term and thereafter until his or her successor is duly appointed. Vacancies in office shall be filled by appointment in the same manner as the appointment to the position that becomes vacant, subject to the advice and consent of the Senate at the

next regular session of the Legislature. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term and thereafter until his successor is duly appointed.

(3) Members of the board shall receive no annual salary but shall be entitled to reimbursement for all actual and necessary expenses incurred in the discharge of their official duties, including mileage as authorized by Section 25-3-41.

(4) The members of the board shall be appointed pursuant to the following guidelines:

(a) The members of the board should be a resident of the state, and should reflect the demographics of the state.

(b) Each member shall have a demonstrated interest in the needs of low-income individuals and families and the revitalization of distressed neighborhoods.

(c) One (1) member shall be from the legal services or fair housing community.

(d) One (1) member shall be a person qualifying as a low-income individual or family.

(e) One (1) member shall be a representative from a Community Housing Development Organization (as defined by the United States Department of Housing and Urban Development).

(f) One (1) member shall be from a financial institution that finances affordable housing in distressed communities, nominated by the Mississippi Bankers' Association.

(g) One (1) member shall be from an intermediary involved in financing or constructing affordable housing in the state.

(h) One (1) member shall be a representative of a Public Housing Authority.

(i) One (1) member shall be a representative from a community service organization.

(j) One (1) member shall be nominated by the Board of the Mississippi Home Corporation.

(k) One (1) member shall be nominated by the Home Builders Association of Mississippi.

(l) One (1) member shall be nominated by the state chapter of the American Association of Retired Persons.

(m) One (1) member shall be nominated by the Mississippi Coalition of Citizens with Disabilities.

(5) The board shall be responsible for the overall management of the trust fund, including, but not limited to, the following duties:

(a) To approve rules and regulations proposed by the MDA.

(b) To oversee the management of monies in the trust fund.

(c) To approve awards of trust fund monies to applicants, based on recommendations of the MDA.

(d) To review annual monitoring reports prepared by the MDA.

(6) (a) There is created a joint legislative committee of the Mississippi State Legislature, to be known as the Mississippi Affordable Housing Trust Fund Oversight Committee. The committee shall consist of five (5) members of the House of Representatives appointed by the Speaker of the House and five (5) members of the Senate appointed by the Lieutenant Governor. The committee shall serve only in an advisory capacity to the board and shall have no vote on any matter within the jurisdiction of the board. The term of office of each member of the committee shall expire concurrently with the term being served by that member as a member of the House of Representatives or the Senate, as the case may be.

(b) The committee shall report on the actions of the board to the appropriate House and Senate legislative committees. When the Legislature is not in session, members shall be paid per

diem and all actual and necessary expenses, including mileage expenses, from their respective contingent expense funds at the rate authorized for same.

SECTION 5. (1) In furtherance of the purposes described in Section 1 of this act, the MDA shall administer the trust fund to provide loans, loan guarantees, loan subsidies, grants or other comparable forms of assistance to eligible applicants for the following activities:

(a) Housing production (both rental and home ownership), including, without limitation, new construction, rehabilitation and adaptive reuse.

(b) Acquisition, including, without limitation, land, single-family residential buildings, multifamily residential buildings and other existing dwellings that may be used in whole or in part for residential purposes.

(c) Rental assistance payments.

(d) Down payment assistance for home ownership.

(e) Preservation of existing affordable housing, including emergency repair.

(f) Housing related support services, including home ownership education and financial counseling, down payment assistance and foreclosure prevention.

(g) Grants or loans to not-for-profit organizations whose purpose is addressing the affordable housing needs of low-income individuals or families.

(2) Funds in the trust fund account must be used for the benefit of low-income persons or families. The MDA and oversight board shall develop and implement rules and regulations that are consistent with the following annual income targeting goals:

(a) At least sixty percent (60%) of the funds in the trust fund shall benefit very low-income persons and families, and at least fifty-five percent (55%) of that sixty percent (60%) shall benefit extremely low-income persons and families.

(b) At least fifty-five percent (55%) of the funds in the trust fund shall benefit rural areas.

(c) At least forty percent (40%) of the funds in the trust fund shall benefit home ownership activities.

(d) At least forty percent (40%) of the funds in the trust fund shall benefit rental activities.

(3) (a) All housing projects funded by the trust fund will be required to meet a minimum applicable affordability period, in order to ensure that affordable housing in the state is sustained over the long term. The MDA and the board shall develop and implement rules and regulations that are consistent with the provisions of this subsection. For rental properties, the MDA and the board shall develop and implement procedures for the annual verification of rental and income levels of tenants. For home ownership properties, the MDA and the board shall develop and implement procedures whereby the deed (or other applicable land title recordation document) contains binding income level restrictions for applicable home owners.

(b) The minimum applicable affordability periods for rental housing shall be:

(i) For the acquisition and/or rehabilitation of existing housing where the average per unit amount of trust fund monies expended is less than Fifteen Thousand Dollars ($15,000.00), the minimum affordability period shall be five (5) years.

(ii) For the acquisition and/or rehabilitation of existing housing where the average per unit amount of trust fund monies expended is equal to or greater than Fifteen Thousand Dollars ($15,000.00) but equal to or less than Forty Thousand Dollars ($40,000.00), the minimum affordability period shall be ten (10) years.

(iii) For the acquisition and/or rehabilitation of existing housing where the average per unit amount of trust fund

monies expended is greater than Forty Thousand Dollars ($40,000.00), the minimum affordability period shall be fifteen (15) years.

(iv) Where trust fund monies are used for the refinancing of existing housing, the minimum affordability period shall be fifteen (15) years.

(v) Where trust fund monies are used for the construction of new housing, the minimum affordability period shall be twenty (20) years.

(c) The minimum applicable affordability periods for home ownership housing shall be:

(i) Where the average per unit amount of trust fund monies expended is less than Fifteen Thousand Dollars ($15,000.00), the minimum affordability period shall be five (5) years.

(ii) Where the average per unit amount of trust fund monies expended is equal to or greater than Fifteen Thousand Dollars ($15,000.00), but less than or equal to Forty Thousand Dollars ($40,000.00), the minimum affordability period shall be ten (10) years.

(iii) Where the average per unit amount of trust fund monies expended is greater than Forty Thousand Dollars ($40,000.00), the minimum affordability period shall be fifteen (15) years.

(4) Monies from the trust fund shall be awarded through a competitive application process administered by the MDA. The board shall be responsible for the final approval of applications. Applications shall be scored on a points system, and evaluated based on criteria established by the MDA and approved by the board. At a minimum, such criteria must include (and shall not include any criteria inconsistent with) the following:

(a) The ability of the applicant to timely complete the proposed construction and/or rehabilitation, determined through

consideration of past history in completing projects of similar scale and nature.

(b) For rental housing, the property management history of the developer and management agent.

(c) The timeliness with which the proposed project will be placed in service and available for occupancy.

(d) The length of the affordability period for the project beyond the minimum affordability period as set forth in paragraph (b)(iii) of this subsection, and the strength of the enforcement mechanisms proposed by the applicant to ensure such long-term affordability.

(e) The percentage of units in the proposed project that shall be made available to extremely low-income families and individuals.

(f) The degree to which trust fund monies are used to leverage additional funds for the proposed project, and/or the time frame for repayment of trust fund monies.

(g) The extent to which the applicant has addressed or intends to address community concerns related to the proposed project as described in any locally adopted plan.

(h) For the rehabilitation of existing projects, the extent to which the applicant attempts to minimize the negative impacts on existing tenants and community members, particularly displacement of existing occupants.

(i) The extent to which the proposed project serves occupants with special needs, including, but not limited to, elderly, disabled, mentally ill or homeless persons.

(j) The extent to which the proposed project adheres to energy-efficiency standards and other "green" housing principles.

(k) The extent to which financial and/or home ownership counseling is provided for occupants.

(l) The overall extent to which the proposed project meets the stated goals of the trust fund.

SECTION 6. Five percent (5%) of the money credited each year to the trust fund account may be used to make capacity building grants to nonprofit organizations, local government units, Native American tribes and Native American tribal organizations to expand their capacity to provide affordable housing and housing-related services. The grants may be used to assess housing needs and to develop and implement strategies to meet those needs, including the creation or preservation of affordable housing, prepurchase and post-purchase counseling and associated administrative costs, and the linking of supportive services to the housing. The MDA, with the approval of the board, shall adopt rules and regulations specifying the eligible uses of grant money under this section; however, such rules and regulations shall give funding priority to those applicants that include low-income individuals and families in their membership, have provided housing-related services to low-income individuals and families, and demonstrate a commitment of local resources, which may include in-kind contributions.

SECTION 7. Administrative costs incurred by the board and MDA in implementing the provisions of this act may be paid from the trust fund; however, no more than five percent (5%) of the monies in the trust fund and in no event not more than Four Hundred Thousand Dollars ($400,000.00) shall be spent on an annual basis for such costs.

SECTION 8. (1) A participating jurisdiction may be eligible to receive matching funds from the trust fund, provided that it meets the requirements of this section.

(2) Matching funds from the trust fund shall be available to a participating jurisdiction if the participating jurisdiction:

(a) Uses such matching funds in compliance with all applicable trust fund rules and regulations, including, but not limited to, applicable restrictions on eligible activities and income targeting; and

(b) Expends Twenty-five Cents (25¢) from the participating jurisdiction trust fund for every One Dollar ($1.00) from the trust fund.

(3) Participating jurisdictions may use matching trust fund proceeds as a source of matching funds for any federal housing programs, except the HOME Investment Partnership Program.

(4) In order to demonstrate compliance with subsection (2)(b) of this section, a participating jurisdiction may use sources such as the value of donated land or buildings, the value of donated infrastructure improvements, cash, tax abatements, and public or private contributions.

SECTION 9. (1) To the greatest extent possible, the trust fund shall be implemented and operated in compliance with other state and federal housing programs and sources of funds, including, but not limited to, the HOME Investment Partnership program, the Community Development Block Grant program, the Low-Income Housing Tax Credit program, U.S. Department of Housing and Urban Development programs, and USDA Rural Housing programs.

(2) All housing projects funded in whole or in part with monies from the trust fund shall comply in all respects with applicable fair housing laws and regulations.

SECTION 10. Section 75-76-129, Mississippi Code of 1972, is amended as follows:

[Through June 30, 2022, this section shall read as follows:]

75-76-129. On or before the last day of each month all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, and (b) an amount equal to Three Million Five Hundred Thousand Dollars ($3,500,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c), shall be paid by the Department of Revenue to the State Treasurer to be deposited in

the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 65-39-3, and an amount equal to Five Hundred Thousand Dollars ($500,000.00) shall be deposited by the Department of Revenue into the Mississippi Affordable Housing Trust Fund created in Section 2 of this act.

[From and after July 1, 2022, this section shall read as follows:]

75-76-129. On or before the last day of each month, all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of the local government fees imposed under Section 75-76-195 and an amount equal to Three Million Five Hundred Thousand Dollars ($3,500,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c), shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Five Hundred Thousand Dollars ($500,000.00) shall be deposited by the Department of Revenue into the Mississippi Affordable Housing Trust Fund created in Section 2 of this act.

SECTION 11. This act shall take effect and be in force from and after July 1, 2011.