

Public Housing Provisions in the Economic Development Bill (H.4702), as Reported Out by House Committee on Bonding, Capital Expenditures & State Assets

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This document contains the public housing provisions in the Economic Development Bill, as reported out by the House Bonding Committee on July 3, 2018.¹ The document provides a description of the section followed by the language. The tracked-changes in the language reflect edits made by the House Bonding Committee to the provisions as filed by Governor Baker in his Economic Development Bill.²

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¹ H. 4702, 190th Gen. Ct. §§ 31–47 (Mass. 2018).

² H. 4297, 190th Gen. Ct §§ 26–42 (Mass. 2018).

SECTION 31. DEFINITIONS

Description: Adds definitions to the state’s public housing law for the following terms:

- Capital Funds
- Controlled Affiliate
- Federal Replacement Unit
- Replacement Unit

These definitions describe the former public housing units, which include both state and federally supported units, that will be the affordable housing units at rehabilitated developments.

Language:

SECTION ~~26~~31. Section 1 of chapter 121B of the General Laws, as so appearing, is hereby amended by—

(a) inserting, after the definition of “Blighted open area,” the following definition:-

“Capital funds”, funds advanced by the department to a housing authority under state legislation financing capital outlays for housing production ~~and~~/or preservation, including without limitation state legislation authorizing the issuance and sale of bonds by the Commonwealth to finance capital expenditures.

(b) inserting, after the definition of “Community renewal program,” the following definition:-

“Controlled affiliate”, an entity with the power to own and operate real property of which and over which actual and legal control shall be in a local housing authority.

(c) inserting, after the definition of “Federal legislation,” the following definition:-

“Federal replacement units”, housing units that provide replacement housing for an existing or former federally-assisted public housing project in accordance with federal standards as established pursuant to (1) section 9 of the United States Housing Act of 1937, as amended, (2) the federal Rental Assistance Demonstration program; (3) the federal Choice Neighborhoods Initiative; (4) section 8(o)(13) of the United States Housing Act of 1937, as amended; or (5) such other similar or equivalent federal standards or successor programs as identified by the department.

(d) inserting, after the definition of “Relocation project,” the following definition:-

“Replacement units”, [\(1\) federal replacement projects; or \(2\)](#) low rent housing created to replace an existing housing project that is demolished or disposed of under subsection (k) of section 26; such units may be included within a privately owned mixed-income development that also includes dwellings that are not low rent housing, provided that the use and occupancy of the replacement units is subject to a binding legal contract and land use restriction under paragraph (7) of subsection (k) of section 26.

SECTION 32. BORROWING AGAINST CAPITAL FUNDS

Description: Authorizes LHAs, with DHCD approval and pursuant to a DHCD-approved capital plan and regulations, to pledge a portion of their capital funds to secure debt, subject to availability under the capital plan.

Because the amount of capital funds available to an LHA in any given year is often less than what is required to undertake urgent capital needs, such as roof replacement across all buildings in a given project, the ability to borrow against a stream of capital funds will allow LHAs to carry out critical projects in a timelier manner, with associated cost savings.

Language:

SECTION ~~28~~[32](#). Section 11 of said chapter 121B, as so appearing, is hereby amended by adding the following paragraph:-

“Notwithstanding any general or special law to the contrary, a housing authority, with the approval of the department, shall have the power to secure indebtedness incurred for the preservation, modernization and maintenance of one or more of its low-rent housing developments assisted under section 32 or section 34 of chapter 121B by a pledge of a portion of capital funds awarded to it for improvements to be carried out pursuant to a department-approved capital improvement plan in accordance with department regulations governing capital projects. The department shall promulgate regulations establishing limitations on the percentage of awarded capital funds that may be pledged to secure indebtedness, describing permitted terms for borrowing and repayment, and establishing criteria for housing authorities that will be permitted to incur indebtedness secured by a pledge of capital funds. Any pledge of future year capital funds under this section is subject to the availability of funds under the department’s capital spending plan as approved by the governor for that year. All financing documents related to future year capital fund amounts must include a statement that the pledging of funds is subject to the availability of funds under the department’s capital spending plan as approved by the governor.”.

SECTION 33. PILOT PROVISION

Description: Exempts a portion of privately-owned redevelopment projects that include both state and federal public housing replacement units from ordinary real estate taxes, with a pro-ratio based on square footage ratios. The exempt portion of buildings or structures and land will be subject to the same agreements on payments in lieu of taxes (PILOT) that apply to other public housing units in the municipality.

Language:

SECTION ~~29~~33. Section 16 of said chapter 121B, as so appearing, is hereby amended by adding the following paragraph:-

“Notwithstanding any provision to the contrary in this chapter or in any other general or special law relative to the tax status of real property, ~~where a housing authority sells or transfers ownership of~~ buildings or other structures ~~on land~~ owned by ~~it to~~ a housing authority, a controlled affiliate, or another private entity, including without limitation a for-profit or charitable corporation, general or limited partnership, or limited liability company, ~~for the purpose of rehabilitation, repair, development, or redevelopment of multifamily housing that~~ that contain or will contain replacement units as defined in section 1, ~~so much of the resulting~~ shall be exempt from taxation, betterments and special assessments to the extent such buildings or structures ~~as is~~ are restricted for use as replacement units, including associated common areas, and associated land ~~shall be exempt from taxation, betterments and special assessments~~. If replacement units and associated common areas constitute only a portion of such resulting buildings or structures, the exemption shall be prorated based on the ratio which the square footage of replacement units bears to the square footage of all other residential or commercial units within the buildings or structures. The housing authority, controlled affiliate or other private entity shall pay (i) with respect to the exempt portion of the buildings or structures and land, a payment in lieu of taxes consistent with the valuation or other formula generally applicable under this section to the housing authority’s real estate in the city or town in which such real estate is located, or as otherwise previously agreed upon between the city or town and the housing authority as the method for computing the payments to be made in lieu of taxes, and using the ratio described above; and (ii) with respect to the non-exempt portion of the buildings or structures and land, real estate taxes in accordance with chapter 59 of the General Laws based on the fair cash value of the non-exempt portion of the buildings or structures and non-exempt portion of the land using the ratio described above.”.

SECTION 34. CLARIFICATION ON DISPOSITION POWER

Description: Clarifies that an LHA’s power to undertake the disposition of property includes a disposition by a means other than sale (e.g., long-term lease).

Language:

SECTION ~~30~~34. Section 26 of said chapter 121B, as so appearing, is hereby amended by inserting after the word “sale,” in line 91, the following words:- “or other disposition”.

SECTION 35. CLARIFICATION ON DISPOSITION OF LHA PROPERTY

Description: Makes clear that Section 34 of Chapter 121B applies to sales or other dispositions of a project by an LHA under Section 26(k).

Language:

SECTION ~~31~~35. Said section 26 of said chapter 121B, as so appearing, is hereby further amended by striking out, in lines 94 to 95, the words “notwithstanding the provisions of clause (d) or section thirty-four,”.

SECTION 36. CREATING OPPORTUNITIES FOR PUBLIC-PRIVATE REDEVELOPMENT PARTNERSHIPS

Description: Creates greater opportunities for public-private redevelopment of existing public housing sites by revising the findings that DHCD must make to approve a sale or disposition of a public housing development.

Adds a requirement for one-for-one replacement of units unless a shortage of low-rent housing no longer exists in the applicable city or town or where some reduction in units is necessary to increase the number of units that are accessible for persons with disabilities.

Language:

SECTION ~~32~~36. Subsection (k) of said section 26 of said chapter 121B, as so appearing, is hereby further amended by striking out paragraphs (1), (2), (3), and (4) and inserting in place thereof the following 4 paragraphs:-

“(1) found that all or a substantial portion of such existing housing project or part thereof requires such substantial modernization or rehabilitation to continue to provide decent, safe and sanitary housing that, in the judgment of the department, the required substantial modernization or rehabilitation cannot feasibly be executed by the housing authority pursuant to the provisions of this chapter;

(2) approved the proposed project, including a relocation plan for occupants of the existing project and a plan to make housing available on the land where the existing project is situated, in which the number of replacement units restricted as low rent housing for occupancy by low income persons or families shall be the same as the number of low rent housing units in the existing housing project or part thereof that is subject to demolition or disposition, unless the department determines that (A) a shortage of low-rent housing no longer exists in the applicable city or town, or (B) the reduction in the number of units is necessary to increase the number of units that are accessible for persons with disabilities, which project may include plans to use a portion of such land for market-rate housing or for a public purpose ancillary to such development and approved by the department;

(3) approved the sale or other disposition and the terms thereof, which shall be at the fair market value for the proposed reuse unless the department determines that a below-market disposition would be in the public interest in order to support the continued occupancy of dwelling units in the new development by families of low income;

(4) determined that the availability of funds to the housing authority for such project is conditioned upon the occurrence of the initial mortgage loan closing for the development of new or rehabilitated housing on the land where the existing project is situated; and the selection by the housing authority through a qualifications-based competitive procurement process approved by the department of a developer best qualified to develop, own and operate the new or rehabilitated housing on the existing land, for providing for such development of the new housing within a reasonable time in accordance with department-approved contracts, and for assuring continued occupancy of the required number of replacement units in the new development by families of low income in accordance with the requirements of this chapter;”.

SECTION 37. TECHNICAL ASSISTANCE FOR TENANTS

Description: Requires LHAs to describe how tenants will be provided technical assistance in order for them to have meaningful input on public housing redevelopment projects that affect them.

Language: *The Governor’s Economic Development Bill (H.4297) did not include this language.*

[SECTION 37. Said subsection \(k\) of said section 26 of said chapter 121B, as so appearing, is hereby further amended by striking out paragraph \(6\) and inserting in place thereof the following paragraph:-](#)

[“\(6\) found that the housing authority has described how occupants in state-aided public housing will be provided with independent technical assistance sufficient to allow them meaningful and informed input into the development of the proposed project and that representatives of all occupants of such existing housing project, selected by the](#)

occupants in a manner approved by the department, have fully participated in the development of the project proposal and that all occupants of such existing housing projects have adequate notice and an opportunity to review the proposed project and relocation plan and an opportunity to present their views at a public hearing which shall be held by the department.”.

SECTION 38. APPLYING PUBLIC HOUSING RESTRICTIONS AND TENANT PROTECTIONS ON REPLACEMENT UNITS

Description:

- Requires, as a condition of sale or disposition of an existing housing project, that the transferee enter into a binding land use restriction that requires compliance with public housing restrictions and tenant protections with respect to the replacement units in perpetuity, except in limited circumstances for projects utilizing Federal low income housing tax credits;
- Allows residents of replacement units to enforce the terms of the legal contracts, land use restrictions, and regulations for their development;
- Provides housing authorities and DHCD with monitoring and enforcement responsibilities articulated in the contract and land use restriction documents; and
- Directs DHCD to issue regulations to implement these provisions.

Language:

SECTION ~~33~~38. Said subsection (k) of said section 26 of said chapter 121B, as so appearing, is hereby further amended by adding the following paragraph:-

“(7) approved a binding legal contract and land use restriction to be entered into by the transferee of the property in favor of the local housing authority and the department of housing and community development that requires compliance with chapter 121B of the General Laws and ~~760-CMR-§§~~sections 4.00 et seq., 5.00 et seq. ~~and~~, 6.00 et seq., 8.00 et seq., 27.00 et seq., and 47.00 et seq. of title 760 of the Code of Massachusetts Regulations with respect to the replacement units in the same manner and to the same effect as if such entity were a housing authority, subject to such regulatory waivers given by the department of housing and community development as may be necessary to secure financing; that provides prospective, present or former occupants of the replacement units with the ability to enforce such contractual obligations that impact their rights; and that delineates the roles of the housing authority and the department in monitoring and enforcing compliance with the contract and regulations named herein. The contract shall require compliance in perpetuity unless the department determines that the project financing requires the use of Federal low income housing tax credits and that compliance in perpetuity would make it infeasible to comply with Internal Revenue Service requirements with respect to the low

income housing tax credit program. [The department shall promulgate rules and regulations to further the purposes of subsection \(k\).](#)”

SECTION 39. TECHNICAL CHANGE

Description: Technical change to replace reference to particular sections with reference to chapter as a whole.

Language:

SECTION ~~34~~[39](#). Said section 26 of said chapter 121B, as so appearing, is hereby further amended by striking out, in line 242, the words “section or section 34” and inserting in place thereof the following words:- “any provision of this chapter”.

SECTION 40. TECHNICAL CHANGE

Description: Technical change to address powers of a housing authority when it is not financially feasible to maintain units to a reasonable program standard for occupancy even if the units have not yet fallen below that standard.

LANGUAGE:

SECTION ~~35~~[40](#). Said section 26 of said chapter 121B, as so appearing, is hereby further amended by inserting after the words “feasible to”, in line 247, the following words:- “maintain or to”.

SECTION 41. TECHNICAL CHANGE

Description: Technical correction to make clear that section 26(p) applies to certain types of dispositions as well as demolition.

Language:

SECTION ~~36~~[41](#). Said section 26 of said chapter 121B, as so appearing, is hereby further amended by inserting after the word “demolition,” in line 251, the following words:- “or other disposition”.

SECTION 42. VACANCY DETERMINATION

Description: Changes the requirement that a unit must be determined to be vacant as of November 1, 2012 to a requirement that the unit be vacant for a two-year period before a housing authority seeks DHCD approval to dispose of or demolish the unit.

Language:

SECTION ~~37~~42. Said section 26 of said chapter 121B, as so appearing, is hereby further amended by striking out, in line 253, the words “as of November 1, 2012” and inserting in place thereof the following words:- “for at least 2 years”.

SECTION 43. PROCUREMENT OF DEVELOPER PARTNERS

Description: Allows LHAs to procure developer partners for state and federal public housing redevelopment projects through a competitive, qualifications-based procurement process that will allow the disposition of property to the selected developer without having to go through a separate land disposition process.

The proposed language retains protections inherent in ch. 30B, § 16, by requiring a pre-disposition appraisal and publication in the central register if the final disposition price is less than appraised value.³

Language:

SECTION ~~38~~43. Said section 26 of said chapter 121B, as so appearing, is hereby further amended by adding the following subsections:-

“(q) Notwithstanding any general or special law to the contrary, including without limitation section 16 of chapter 30B of the General Laws, a housing authority may dispose of property pursuant to this section or section 34 of this chapter to a developer selected by competitive, qualifications-based procurement without separately soliciting proposals for the property disposition, provided that the developer procurement declares the property available for disposition and that, in the case of a disposition of property pursuant to subsection (k), the number of replacement units required under paragraph (2) of said subsection (k) are provided. Without limiting the generality of the foregoing—

(1) a housing authority shall not be required to determine the value of the property prior to soliciting proposals for selection of a developer best qualified to develop, own and operate the new or rehabilitated housing on the land. Prior to disposition of property by deed or other instrument, the housing authority shall determine the value of the property through procedures customarily accepted by the appraising profession as valid prior to the sale or other disposition of the property, and

³ Mass. Gen. Laws ch. 30B, § 16 (governing the disposition or acquisition of real property by a governmental body).

if, with the approval of the department, the housing authority decides to dispose of the property at a price less than the value as so determined, the housing authority shall publish notice of its decision in the central register, explaining the reasons for its decision and disclosing the difference between such value and the price to be received; and

(2) a housing authority shall not be required to specify all of the restrictions that may be placed on the subsequent use of property prior to selecting a developer through a qualifications- based competitive procurement process, provided that the developer procurement identifies the minimum number of dwelling units in the new development that must be occupied by families of low income. In the case of a disposition pursuant to subsection (k), such minimum number must conform to the requirements of paragraph (2) of subsection (k).

(r) Notwithstanding any general or special law to the contrary, including without limitation section 16 of chapter 30B of the General Laws, a housing authority may dispose of federally assisted public housing projects and the property on which such projects are located to a developer selected by competitive, qualifications-based procurement without separately soliciting proposals for the property disposition, provided that the developer procurement declares the property available for disposition and that such disposition is approved by the federal government.

(s) Section 16 of chapter 30B of the General Laws shall not apply to a transfer of property from a housing authority to a controlled affiliate for purposes of redeveloping such property.”

SECTION 44. EXEMPTION FROM DHCD OVERSIGHT

Description: Exempts LHAs that do not own, lease or manage any state-aided public housing units from DHCD oversight. However, these LHAs will remain subject to audit by the state auditor.

Language:

SECTION ~~39~~44. Section 29 of said chapter 121B, as so appearing, is hereby amended by adding the following paragraph:-

“Notwithstanding any provision to the contrary in this section or elsewhere in this chapter, if a housing authority does not own, lease or manage any housing project eligible to receive ongoing capital or operating assistance under section 32 or section 34 of this chapter, the department shall not investigate such housing authority’s budgets, finances, dealings, transactions and relationships or other affairs, nor shall the department require periodic reporting by any such housing authority. Without limiting the generality of the foregoing, a housing authority that does not own, lease or manage any housing project eligible to receive ongoing capital or operating assistance under section 32 or section 34 of this chapter shall not be required to— (a) conduct elections for tenant board members under section 5A; (b) participate in a training program under

section 5B; (c) submit contracts with its executive director to the department for review pursuant to section 7A; (d) participate in the performance-based monitoring program established pursuant to section 26B; (e) participate in the regional capital assistance team program established pursuant to section 26C; (f) prepare and submit an annual plan pursuant to section 28A and this section; or (g) prepare and submit, or make available, a written report and agreed upon procedures for review of housing authority financial records pursuant to this section 29.”.

SECTION 45. PROCEEDS FROM DISPOSITION OF LHA PROPERTY

Description: Allows an LHA to retain the proceeds from the disposition of real property after all bonds from the Commonwealth are paid in full. If the LHA has no more public housing after the disposition, proceeds will be paid to DHCD. In both cases, the funding will be used to address modernization and maintenance needs at state-aided public housing.

Language:

SECTION ~~40~~45. Section 34 of said chapter 121B, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

“The proceeds of any sale or other disposition of such project in excess of the total of all obligations of the housing authority with respect to such project shall, after the payment of all bonds issued by the housing authority to finance the cost of such project and payment of the costs of the sale or disposition, be retained by the housing authority for the preservation, modernization and maintenance of its public housing assisted under this chapter as approved by the department, or where the housing authority has no public housing assisted under this chapter, such proceeds shall be paid to the department to fund capital improvements for the preservation, modernization and maintenance of state-aided public housing.”.

SECTION 46. CONFORMING CHANGE ON DISPOSITION OF LHA PROPERTY

Description: Makes a conforming change regarding the disposition of LHA property in order to implement these provisions.

Language:

SECTION ~~41~~46. Said section 34 of said chapter 121B, as so appearing, is hereby further amended by striking out the tenth paragraph and inserting in place thereof the following paragraph:-

“Whenever a housing authority shall determine that land acquired by it under clause (d) of section 11 for the purpose of this section is in excess of or no longer required for such purposes it may, upon approval by the department, sell or otherwise dispose of such land by deed or instrument approved as to form by the attorney general. If the housing authority is disposing of such land for purposes of housing development, it may do so in accordance with section 26 of this chapter. So long as any bonds issued by a housing authority to finance the cost of a project under this section or section 35 and guaranteed by the commonwealth are outstanding, funds received from a disposition of land as provided in this chapter shall be applied in accordance with the fourth paragraph of this section. After the payment of all bonds issued by the housing authority to finance the cost of such project, funds received shall be applied in accordance with the fifth paragraph of this section.”.

SECTION 47. PROCUREMENT EXEMPTION

Description: Exempts private redevelopment of public housing from the public bidding requirements of ch. 149, including filed sub-bid requirements. However, this section does not relieve such redevelopment from prevailing wage requirements, to the extent applicable.

Language:

SECTION ~~42~~47. Said section 34 of said chapter 121B, as so appearing, is hereby further amended by adding the following paragraph:-

“Notwithstanding any general or special law to the contrary, construction and development activity related to redevelopment of state-aided public housing projects where the land, buildings or structures associated with the housing project have been conveyed or transferred to a private entity for purposes of completing the redevelopment shall not be subject to any general or special law related to the procurement and award of contracts for the planning, design, construction management, construction, reconstruction, installation, demolition, maintenance or repair of buildings by a public agency, provided that the department shall review and approve the procurement processes used to undertake this redevelopment ~~in accordance with subsection (q) of section 26~~. Nothing in this section shall be deemed to exempt a housing project from sections 26 to 27H, inclusive, of chapter 149 of the General Laws.”.