

H. 1417 Re-Draft with Proposed Tenant Protection Language

April 5, 2022

Proposed Tenant Protection Language for H.1417

The following highlights requested language changes to H.1417 that will ensure tenant protections remain in place for current and future residents as development and redevelopment happen in public housing.

There was general agreement among Mass. Union of Public Housing Tenants, Mass. Law Reform Institute, Greater Boston Legal Services, CHAPA, housing authorities, and affordable housing developers to incorporate these protections into the bill.

Principles of Tenant Protections:

- Clarify that basic tenant protections are preserved
- Provide a clear path to enforce protections
- Provide for the issuance of regulations and sub-regulatory contracts and forms
- Provide that tenants should not be adversely affected by change in subsidy or ownership
- Provide tenants with technical assistance to allow for meaningful input

SECTION 1. [Section 1 of chapter 121B](#) of the General Laws, as so appearing, is hereby amended by adding the following paragraph after the definition for “Community renewal program”:-

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

[“Designated private entity”, an entity including without limitation a non-profit, for-profit or charitable corporation, general or limited partnership, or limited liability company that owns or controls a formerly state or federal public housing project that contains or will contain low rent housing as defined in section 1.](#)

Commented [ES1]: A definition for “Designated private entity” was added because it appeared in the bill text but was not defined.

SECTION 2. Section 34 of said chapter 121B is hereby amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, construction and development activity related to development or redevelopment of state-aided or federally assisted public housing projects by a public housing authority or a controlled entity of a public housing authority or where the land, buildings or structures associated

with the housing project will be or have been conveyed or transferred to a housing authority's controlled entity or a designated private entity for purposes of completing the development or 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 housing authority's controlled entity or designated private entity, ~~provided that the procurement process shall be in conformity with federal procurement requirements for similar projects in accordance with 2 C.F.R. 200 et. seq., if applicable.~~ Nothing in this section shall be deemed to exempt a housing project from prevailing wage requirements in sections 26 to 27F, inclusive, and section 29 of chapter 149 of the General Laws.

Notwithstanding any provision in this section, the tenants of projects transferred under this section shall, at a minimum, maintain the following rights as provided under the provisions of the federal, state, and local subsidy programs originally applicable to the project, including rent determination, lease terms, eviction, right to return, grievance, resident participation, preference in hiring, and privacy rights, except as may be required to secure financing necessary for the feasibility of the project, or to meet associated programmatic eligibility requirements subject to clause (ii) in the following paragraph after notice to affected tenants with an opportunity to comment. Provided further, the redevelopment shall not be the basis for re-screening of existing tenants or termination or reduction of assistance or eviction of any tenant in a subject property, and such a tenant shall not be considered a new admission for any purpose, including compliance with any income targeting requirements. Provided further, such projects under this section shall have at least the same number of low rent housing units as the number of low rent housing units in the existing project.

Provided further, the requirements for such projects under this section shall be implemented through contracts, use agreements, regulations, or other means so long as they remain consistent with this section and all local, state and federal subsidy programs applicable to the project pursuant to this section and delineate: (i) the roles of the housing authority and other agencies in monitoring and enforcing compliance, including tracking temporary and permanent displacement; (ii) how the housing authority will rehouse tenants so there is no displacement from affordable housing programs operated by the housing authority, and (iii) how tenants will be provided with technical assistance to allow them meaningful input into the development of the proposed project; provided further the benefits of any use agreement shall inure to any tenant who occupied the project at time of redevelopment or to present or future tenants or applicants of the project, who shall have the right to enforce the same as third-party beneficiaries provided that nothing in this section is intended to create a separate or new administrative process of appeal or review for any grievance governed by the lease of any tenant.

Commented [ES2]: This language was removed because it was unnecessary. Any applicable federal procurement requirements will have to be followed, regardless of whether this text is included.

Commented [ES3]: Makes clear and provides a list of rights that tenants will retain in the redeveloped projects:

- Rent determination rights
- Lease terms rights
- Eviction rights
- Right to return rights
- Grievance rights
- Resident Participation rights
- Preference in hiring rights
- Privacy rights

The language allows for certain rights to differ at the redevelopment property **in limited situations** if a certain program is required for financing the project or to meet certain associated program eligibility requirements.

However, in those limited circumstances, tenants have a right to notice and comment on any changed rights.

If any of these rights impact a resident's eligibility for a redeveloped unit, **the housing authority has the responsibility to find a way to re-house that tenant** so there is no displacement for affordable housing programs.

Commented [ES4]: The redevelopment of any property will not subject any existing tenant to:

- Rescreening;
- Termination;
- Reduction of assistance, or
- Eviction

Commented [ES5]: Explicitly requires at least a **one-for-one unit replacement** in any redeveloped property.

Commented [ES6]: Requires redevelopment projects to use contracts, use agreements, regulations, or other means that must include:

- Roles of housing authority or other agencies in monitoring and enforcing compliance;
- Tracking any temporary or permanent displacement;
- How the housing authority will rehouse any tenant so there is no displacement from affordable housing programs

Provided further, that there shall be an opportunity for comment from tenants of such projects to be proposed under this section and an opportunity for public comment to the owners, controlled entities, designated private entities, or public housing agencies responsible for such projects with adequate notice.

Commented [ES7]: Requires an **opportunity for tenants to comment** on any proposed redevelopment project.

SECTION 3. 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, buildings or other structures owned by a housing authority, its controlled entity, or its designated private entity, including without limitation a for-profit or charitable corporation, general or limited partnership, or limited liability company, that contain or will contain income-restricted units as defined in section 1, shall be exempt from taxation, betterments and special assessments to the extent such buildings or structures are restricted for use as income-restricted units, including associated common areas and associated land. If income-restricted 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 income-restricted units bears to the square footage of all other residential or commercial units within the buildings or structures. The housing authority, controlled entity or other designated private entity shall pay (a) 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 (b) 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 4. 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 5. 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 its public housing or other lawful purposes of the housing authority.