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April 18, 2018

Vice President
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The Honorable Joseph Wagner
State House, Room 42
Boston, MA 02133

The Honorable Eric Lesser
State House, Room 413-C
Boston, MA 02133

Vice President
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RE: Testimony on H.4297, *An Act Enhancing Opportunities for All*

Clerk
Naomi Sweitzer

Dear Chairman Wagner, Chairman Lesser, and Distinguished Members of the Joint Committee on Economic Development and Emerging Technologies,

Chief Executive Officer
Rachel Heller

On behalf of Citizens' Housing and Planning Association (CHAPA), thank you for the opportunity to testify on H.4297, *An Act enhancing opportunities for all*.

CHAPA's mission is to encourage the production and preservation of housing that is affordable to low- and moderate-income families and individuals and to foster diverse and sustainable communities through planning and community development. We thank the Governor for including affordable housing in H.4297 because having enough safe, healthy, and affordable homes is critical to economic development.

We are pleased with the \$300 million capital reauthorization for the MassWorks Infrastructure Development Program. This will support more infrastructure grants to municipalities and other public entities to support economic development, affordable housing, and job creation.

Specifically, CHAPA supports, with some suggested edits, sections in the legislation that give local housing authorities more flexibility to enter redevelopment partnerships and to address deferred capital needs. We also support, with several suggested edits, the sections in the bill that clarify how Community Preservation Act funds can be used for community housing.

The following testimony provides suggested changes to improve the language in H.4297 regarding public housing authorities and the Community Preservation Act.

Public Housing Changes

Again, CHAPA supports, with several suggested changes, provisions in H.4297 that give local housing authorities more flexibility to enter redevelopment partnerships and to address deferred capital needs.¹ These sections will support creative efforts to repair and rehabilitate public housing in Massachusetts to ensure that these homes remain affordable and available for all current and future residents.

The bill will help local housing authorities with state public housing units partner with private developers to pursue mixed-income redevelopment of that housing. These public-private partnerships will allow public housing properties to be completely redeveloped and modernized. In return for the modernization of the public housing stock, including a full one-to-one replacement of current units, the housing authorities' development partners will construct additional new market-rate homes to create vibrant communities.

However, CHAPA suggests the following changes to H.4297 in order to improve these proposed reforms:

1. Clarifying Tenant Protections
2. Providing Technical Assistance to Residents
3. Allowing Residents to Enforce Rights
4. Retaining Authority of LHA and DHCD to Monitor and Enforce
5. Issuing Regulations to Implement Public-Private Partnerships
6. Allowing Federal Public Housing to Participate in Public-Private Partnerships

CHAPA also has three concerns regarding the public housing sections in H.4297. Specifically, we have concerns about how these public-private partnerships will impact capital funding for public housing authorities; whether a tenant in a town is required to remain on the board of a housing authority with only replacement units; and if replacement units must be limited to on-site housing.

CHAPA's suggestions and concerns are explained below. Proposed language to implement our recommendations for H.4297 is included at the end of this letter.

1. Clarifying Tenant Protections

As public housing units are converted into private affordable housing, Section 33 of H.4297 should be amended to ensure that the protections for public housing tenants provided by regulations apply to future residents of the affordable housing created by the partnerships between housing authorities and private developers.

H.4297 allows current units in a public housing development to be converted into affordable housing "replacement units" within a privately owned mixed-income development.² The economic development bill states that these developments will comply

¹ H. 4297, 190th Gen. Ct. §§ 26–42 (Mass. 2018).

² H. 4297, 190th Gen. Ct. §§ 27 (Mass. 2018) (defining "replacement units").

with public housing laws and regulations “in the same manner and to the same effect as if such entity were a housing authority,” requiring that developments remain in compliance with the Massachusetts public housing statute, Chapter 121B, and related regulations.³

For regulations that will continue to apply to these developments, H.4297 explicitly lists regulations for the General Administration of Local Housing Authorities;⁴ Eligibility and Selection Criteria;⁵ and Occupancy Standards and Tenant Participation for State-Aided Housing.⁶

To make clear that all public housing regulations apply to these developments, Section 33 of H.4297 should be amended to also explicitly include regulations for privacy and confidentiality,⁷ relocation assistance,⁸ and fair housing.⁹

2. Allowing Residents to Enforce Rights

Section 33 of H.4297 should also be amended to allow residents of replacement units to enforce the terms of the legal contracts, land use restrictions, and regulations for their development. This will help ensure that the affordable housing and tenant protections created by the public-private partnerships between housing authorities and developers remain in place for all current and future residents.

Adding this language will provide a clear path for residents to enforce their rights. This suggested change mirrors protections for residents of affordable units created with the federal Low-Income Housing Tax Credit (LIHTC).¹⁰ This protection also already applies to affordable housing created by the Massachusetts LIHTC program.¹¹

3. Retaining Authority of LHA and DHCD to Monitor and Enforce

Section 33 of H.4297 should provide local housing authorities and the Department of Housing and Community Development (DHCD) with monitoring and enforcement responsibilities which will be articulated in the contract and land use restrictions documents between housing authorities and private developers. This will make clear where residents can turn to enforce regulations and use agreements.

³ H. 4297, 190th Gen. Ct. §§ 33 (Mass. 2018).

⁴ 760 Mass. Code Regs. 4.

⁵ 760 Mass. Code Regs. 5.

⁶ 760 Mass. Code Regs. 6.

⁷ 760 Mass. Code Regs. 8.

⁸ 760 Mass. Code Regs. 27.

⁹ 760 Mass. Code Regs. 47.

¹⁰ See 26 U.S.C. § 42(h)(6)(B)(ii) (allowing enforcement rights to any prospective, present, or former occupants of affordable housing).

¹¹ See 760 Mass. Code Regs. 54.15 (requiring the Massachusetts LIHTC to be administered and allocated in accordance with the standards and requirements applicable to the federal LIHTC).

4. Issuing Regulations to Implement Public-Private Partnerships

Section 33 of H.4297 should also be amended add language directing DHCD to issue regulations to implement these changes that will allow the creation of the public-private partnerships between local housing authorities and developers.

It is impossible to predict and clarify all of the issues that will arise with these new developments. Regulations are necessary to ensure developments will be successful. However, the process of issuing regulations should not be allowed to delay any current or future public-private partnerships from moving forward.

5. Providing Technical Assistance to Residents

Projects developed under the public-private partnerships allowed by H.4297 will seriously impact the homes of current public housing residents. As projects move forward, apartments once managed and owned by local housing authorities will be taken over by private developers. As developments are modernized and improved, new units will be added and mixed-income communities will be created. While ultimately these changes will benefit the preservation of affordable housing, current residents will face serious disruptions, including the need to be relocated as their homes are rehabilitated.

In order for these residents facing significant impacts to their lives to participate and have meaningful input on projects proposed under this legislation, H.4297 should be amended to add a section that requires technical assistance to be provided to these tenants.

The Massachusetts public housing statute, Chapter 121B, currently requires that residents of a public housing development being disposed of must have fully participated and have adequate notice and opportunity to review a proposed project and relocation plan for their development.¹² This requirement will apply to any project developed under a public-private partnership allowed by H.4297.

In order to strengthen this requirement, a new section to H.4297 should be added to clarify that in order to have meaningful participation by tenants, the housing authority must describe how occupants will be provided with technical assistance. Proposed language to achieve this comes directly from existing regulations for the Public Housing Innovations Program.¹³

6. Allowing Federal Public Housing to Participate in Public-Private Partnerships

H.4297 should be amended to allow federal public housing to benefit from the public-private partnerships created by this legislation. Massachusetts is fortunate to have a robust public housing portfolio. This includes 33,800 households in federally supported

¹² Mass. Gen. Laws ch. 121B, § 26(k)(6).

¹³ 760 Mass. Code Regs. 63.04(1)(f).

public housing¹⁴ and 36,000 state supported public housing units.¹⁵ Over 230 local housing authorities manage these public housing units.¹⁶ Often a local housing authority manages both federal and state public housing developments.

Both state and federally supported public housing developments in need of rehabilitation could benefit from the public-private partnerships created by H.4297. However, as currently written, only state public housing developments can benefit from the reforms in the legislation. In order for all residents of public housing to potentially benefit from these partnerships, regardless of whether they live in a state or federally assisted project, H.4297 should be amended to apply to federally supported public housing.

Concerns with Public Housing Provisions in H.4297

CHAPA also has three concerns about the public housing provisions in H.4297.

First, we hope that capital funding for local housing authorities will be increased in order to adequately support all public housing. Capital funding should be sufficient to support both the public-private partnerships between housing authorities and developers as well as traditional public housing developments.

CHAPA thanks the House and Senate for recently passing the Housing Bond Bill, which authorizes \$600 million in capital spending over the next five years for affordable housing, as well as a \$50 million public housing demonstration program. Together, these authorizations will help ensure that all housing authorities receive enough funding to keep public housing in good repair and available for current and future low-income households. We will continue to advocate annually to the Governor for an increased allocation for public housing in the capital budget.

Second, CHAPA is concerned by Section 39 in H.4297 that would exempt a housing authority in a town from the requirement of having a designated tenant seat on the housing authority board if the housing authority has disposed of all of its traditional public housing units. This would only apply to towns as housing authorities in cities would still be required to have a designated tenant seat on the board. Section 39 also exempts commissioners on housing authority boards from receiving training if there are no remaining traditional public housing units. If a housing authority still exists, tenants from replacement units should still have representation on the board. Additionally, if a housing authority still exists, commissioners should be required to participate in training. We ask the committee to consider removing this language from Section 39.

Third, CHAPA has concerns about whether replacement units must be limited to on-site housing within a particular development or if housing may be developed off-site at an

¹⁴ *Massachusetts Fact Sheet: Federal Rental Assistance*, The Cent. on Budget & Policy Priorities (Mar. 30, 2017) <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-MA.pdf>.

¹⁵ *CHAPA Policy Summary on State Housing and Community Development Policy*, Citizens' Hous. & Planning Ass'n 4 (Sept. 2014).

¹⁶ *Public Housing Assistance Programs*, Mass. Dep't of Hous. & Comty. Dev., <https://www.mass.gov/public-housing-assistance-programs>.

alternative location. As currently written, H.4297 prohibits any off-site redevelopment of replacement units.

Regarding allowing replacement units to be off-site, there are deep concerns among legal services advocates who have worked on projects with off-site replacement housing and the serious issues that have arisen. For example, development off-site housing can divide a public housing community, making it difficult to effect tenant participation. Attempts have also been made to count off-site units as housing that counts towards an inclusionary zoning requirement, which reduces the overall production of new affordable homes. Finally, off-site housing may result in a loss of certain types of units, such as replacing larger units with more bedrooms with smaller units.

However, with the proper regulation, oversight, and guidance for developers and housing authorities, there may be situations when developing off-site housing is done well and is appropriate. Allowing off-site replacement units, if done appropriately, such as locating replacement units on adjacent sites or in the same community, can make a revitalization project viable.

Again, as currently written, H.4297 explicitly and implicitly prohibits any off-site development of replacement units. Specifically, Sections 29, 32, and 42 of H.4297 all contain language limiting replacement units to on-site redevelopment.¹⁷

H.4297, and the language in the sections referenced above, should not prevent the broader discussion among stakeholders on the question of allowing off-site replacement units, the policy issues it raises, and recommendations for how to balance the interest of the many diverse parties involved, including tenants, DHCD, housing authorities, developers, and legal services advocates. By giving DHCD the authority to issue regulations in order to implement these public-private partnerships, the public process required to promulgate such regulations, and a commitment from stakeholders to work towards consensus, we can define a clear set of circumstances for developing off-site units.

Community Preservation Act Changes

CHAPA supports, with several suggested edits, the sections in the bill that clarify how Community Preservation Act (CPA) funds can be used for community housing.¹⁸ Proposed language to implement our recommendations for H.4297 is included at the end of this letter.

As currently written, the sections in H.4297 that amend the CPA would allow for overly broad uses of CPA funds for community housing. The bill would allow CPA funds to be

¹⁷ H. 4297, § 29 (language references property “where a housing authority sells or transfers ownership of buildings or other structures on land owned by it”); H.4297, § 32 (referencing making replacement housing available “on the land where the existing project is situated”); H.4297, § 42 (referencing redevelopment where “the land, buildings or structures associated with the housing project have been conveyed or transferred to a private entity”).

¹⁸ H. 4297, §§ 14–16.

used for rehabilitation of all community housing, including housing that was not acquired or created with CPA funds.

We suggest language that would clearly allow CPA funds to be used for currently approved activities, namely the production of community housing and the preservation and rehabilitation of public housing. Also, setting a limit on the amount of CPA housing funds that can go to rehabilitation will allow a balance between resources that support the creation of new housing opportunities and those that preserve existing housing.

We also suggest changes to the language in H.4297 that would explicitly allow CPA funds to be used to develop plans for housing, which would include feasibility studies, community, neighborhood or site-specific land use and development plans, affordable housing plans, and site assessments. While not all housing related funds should go towards creating these plans, developing these can help a community identify opportunities to create affordable housing. This language would clarify that these kinds of uses are allowed by the CPA.

Thank you for your consideration of these suggestions. As always, we look forward to working with you to develop the strongest possible bill to help make sure everyone in the Commonwealth has a safe, healthy, and affordable place to call home.

Sincerely,



Eric Shupin
Director of Public Policy

Recommended Changes to H.4297 for Public Housing Sections

The following is proposed language to substitute for Section 33 of H.4297 in order to implement the following recommendations. The numbers correspond to the section in CHAPA's testimony:

1. Clarifying Tenant Protections
2. Allowing Residents to Enforce Rights
3. Retaining Authority of LHA and DHCD to Monitor and Enforce
5. Issuing Regulations to Implement Public-Private Partnerships

The emphasized language highlights the suggested additions to Section 33.

SECTION 33. 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 §§ 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.~~ 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).

The following is a proposed section to add to H.4297 in order to implement the following recommendation. The number corresponds to the section in CHAPA's testimony:

2. Providing Technical Assistance to Residents

The emphasized language highlights the changes that the new section of H.4297 would make to Mass. Gen. Laws ch. 121B, § 26(k)(6).

SECTION XX. 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.

The following are proposed changes to H.4297 in order to in order to implement the following recommendation. The number corresponds to the section in CHAPA’s testimony:

6. Allowing Federal Public Housing to Participate in Public-Private Partnerships

In order to achieve this, the following sections of H.4297 should be amended:

- **Section 27: Adding Amended Definition for “Replacement Units”**
- **Section XX: Adding definition for “Controlled affiliate”**
- **Section XX: Adding Definition for “Federal replacement units”**
- **Section 29: Payment in Lieu of Taxes (PILOT)**
- **Section 38: Disposition / Chapter 30B**
- **Section 42: Filed Sub-bid Exemption / Chapter 149**

SECTION 27. Said section 1 of said chapter 121B, as so appearing, is hereby further amended by inserting, after the definition of “Relocation project,” the following definition:-

“Replacement units”, [\(i\) federal replacement units, or](#) (ii) low rent housing created to replace 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 XX. Said section 1 of said chapter 121B, as so appear, is hereby further amended by 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.](#)

SECTION XX. Said section 1 of said chapter 121B, as so appear, is hereby further amended by 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, (i) Section 9 of the United States Housing Act of 1937, as amended, (ii) the federal Rental Assistance Demonstration program, (iii) the federal Choice Neighborhoods Initiative, (iv) Section 8(o)(13) of the United States Housing Act of 1937, as amended, or (v) such other similar or equivalent federal standards or successor programs as identified by the department.

SECTION 29. 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 a housing authority, a controlled affiliate or another ~~it to a~~ 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 contain or will contain replacement units as defined in section 1, shall be exempt from taxation, betterments and special assessments so much of the resulting 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 38. Said section 26 of said chapter 121B, as so appearing, is hereby further amended by adding the following subsection:-

(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 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 42. 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 (i) the creation of replacement units as defined in section 1 that will be owned by a private entity, and/or (ii) redevelopment of state-aided or federally assisted public housing projects where the land, buildings or structures associated with the housing project have been or will be 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 create replacement units and/or undertake this redevelopment (including, if applicable, in accordance with subsection (q) of section 26). In the case of redevelopment of state-aided or federally assisted public housing projects claiming exemption pursuant to clause (ii) of the preceding sentence, construction of the replacement units or other buildings or structures on the land associated with the housing project shall not proceed unless and until the conveyance or transfer to the private entity has occurred ~~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, as applicable.

Recommended Changes to H.4297 for Community Preservation Act Sections

SECTION 14. Section 2 of chapter 44B of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word “affordable,” in line 107, the following words:- ; and feasibility studies, community, neighborhood or site-specific land use and development plans;~~and~~ affordable housing plans, site assessments and preparations, including infrastructure installations, appraisals or other pre-development activities undertaken in connection with a determination of feasibility of any acquisition of land for community housing or any acquisition, creation or rehabilitation of community housing.

SECTION XX. Section 5 of said chapter 44B, as so appearing, is hereby further amended by striking out the sentence, “With respect to community housing, the community preservation committee shall recommend, whenever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.” and inserting in place thereof the following sentence:- With respect to community housing, the community preservation committee shall recommend, whenever possible, the reuse of existing buildings or construction of new buildings on previously developed sites and shall not expend more than 50% of the funds expended for community housing for the rehabilitation or restoration of community housing.