



The Commonwealth of Massachusetts  
Office of the Inspector General

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INSPECTOR GENERAL

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May 21, 2019

The Honorable Brendan P. Crighton, Chairman  
Joint Committee on Housing  
State House, Room 520  
Boston, MA 02133

The Honorable Kevin G. Honan, Chairman  
Joint Committee on Housing  
State House, Room 38  
Boston, MA 02133

**Re: Affordable Housing Legislation – House 1321 and Senate 774 and House 1317 and Senate 785**

Dear Chairman Crighton and Chairman Honan:

I am writing in regard to four pieces of legislation affecting local housing authorities presently before your committee:

- **House 1321 and Senate 774 - An Act Restoring the Commonwealth's Public Housing.** These identical bills permit a local housing authority to transfer surplus property to a private developer. Further, housing authorities and development partners would be exempt from following public procurement, design and construction laws.
- **House 1317 and Senate 785 - An Act Leveraging Additional Resources for Local Housing Authorities.** These identical bills allow a local housing authority to borrow funds and retain the proceeds from any sale of property, rather than depositing the proceeds back to the state.

As you may know, the Office of the Inspector General ("Office") has a broad mandate to detect and prevent fraud, waste and abuse in public expenditures. The Office also recognizes the immense need for safe and affordable housing in the Commonwealth. However, the Office has completed a significant amount of review and analysis in this area and has some concerns with these legislative proposals. Specifically, some of the provisions would eliminate long-standing statutory safeguards for procurement, design and construction of public housing. Other provisions may subject taxpayers to potential wasteful spending and risky transactions. I

strongly suggest additional oversight mechanisms be included, or remain in place, to ensure that public dollars and publicly-owned property is not vulnerable to fraud, waste and abuse.

### Public Procurement, Design and Construction Laws

Local housing authorities are required to follow the public procurement, design and construction laws to complete projects fairly, in a quality manner, accountably and in a cost-effective manner. Occasionally, when conducting a highly complex, mixed-financing development project, a local housing authority, after a competitive process, may seek special legislation granting permission for a private developer to avoid the public procurement, design and construction laws. The Office understands that exempting a project from using legislatively-mandated public procurement rules may be appropriate in limited circumstances. However, the broad exemptions proposed could result in unqualified contractors<sup>1</sup> working on these important projects leading to poor-quality construction, as well as creating incentives for cost-cutting to enhance developer profits. Furthermore, authorizing the Department of Housing and Community Development (“DHCD”), on a case-by-case basis, to approve alternative procedures is unprecedented and runs counter to years of public policy establishing uniform and transparent processes that promote accountability and protect the state’s investments in affordable housing.

As you may know, my Office was created in the wake of a major public construction scandal when the Special Commission Concerning State and County Buildings (often referred to as the “Ward Commission”) determined that billions of dollars had been wasted on public building projects. Since then, my Office has sought to ensure that all public construction projects are completed in a fair, transparent and accountable manner. High-quality and cost effective projects are achieved when the public procurement, as well as design and construction laws are followed. Public housing serves a unique and valuable purpose; therefore, it is in the best interest of the Commonwealth that such a broad exemption not be implemented. My Office opposes implementing this broad exemption.

### Net Proceeds

House 1317 and Senate 785 would allow local housing authorities to retain proceeds from the sale or disposition of property. First, in most cases, the land that local housing authorities control was either donated by a municipality for the specific purpose of affordable housing or was purchased with funds from the federal or state government. If the land will be used for luxury housing or other private development in a specific city or town, the proceeds should not necessarily be allotted to its local housing authority. Besides the fairness issue to state and local taxpayers, these proposals raise significant fraud and abuse risks.

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<sup>1</sup> The Division of Capital Asset Management and Maintenance’s Contractor Certification Office is responsible for evaluating general contractors and subcontractors and certifying those that meet specific certification requirements pertaining to their financial soundness, bonding capacity, size of previous projects and past performance.

Over the years, my Office has conducted several reviews of local housing authorities, where fraud and inappropriate use of public dollars has occurred. For example, my Office has found that some local housing authorities have failed to follow basic procurement laws, and have lax internal control policies, while housing boards of trustees are careless in their fiduciary responsibilities. Not all local housing authorities conduct business inappropriately, but the evidence indicates that more oversight is needed, not less. In our view, DHCD should continue to be responsible for overseeing the state's investment in public housing in a whole-state approach; proceeds from any sale should be returned to the Commonwealth or the municipality as appropriate. My Office supports sharing such proceeds from the sale of public property using a fair and open process.

### Competition and Equity

As proposed, the bills calling for disposition of surplus housing authority property could lead to inequities within local jurisdictions and between local housing authorities across the state. It is unlikely that all local housing authorities could benefit as only those with valuable land and property would attract private development interests. Those that do have possible projects would be competing with each other to get private developers to build out property. Only those housing authorities with valuable land would have the opportunity to benefit from these development ventures. In addition, only those housing authorities with the highly specialized expertise and experience will be able to accomplish these complex development projects. In many communities, obtaining affordable land for affordable housing is a formidable task, so disposing of property may be short-sighted. Also, in the absence of uniform rules, red flags are raised relative to favoritism, conflicts-of-interest and other abuses.

### Lack of Statutory Oversight

In addition, House 1317 and Senate 785 allow disposition of property subject to DHCD approval, but does not require the process for sale or disposition to be laid out in statute or regulation. If Chapter 30B, which includes an advertised competitive process, will not be used, my Office recommends that any process for disposing of publicly-owned property be defined in detail by statute or regulation. Again, this will promote transparency and accountability.

In closing, this Office highly recommends adding safeguards to these bills if they are to move forward. Broad exemptions from existing laws that allow a local housing authority to dispose of valuable land is contrary to the principles of legislative oversight, local government and state oversight and this Office's objective of preventing fraud, waste and abuse of public funds and property. Simply eliminating most rules related to designing, constructing, financing and developing quality affordable housing in a fair and transparent manner is not in the best interests of the Commonwealth. The Office further recommends that certain complex projects continue to be approved, if warranted, on a project-by-project basis to ensure transparency and oversight by DHCD and the legislature.

Chairman Crighton and Chairman Honan  
Joint Committee on Housing  
May 21, 2019  
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Please do not hesitate to follow up with me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha".

Glenn A. Cunha  
Inspector General