

MLRI Policy Recommendations

The Affordable Homes Act H.4138

Updated April 2, 2024

On October 18, 2023, Governor Healey filed a \$4 billion housing bond bill, The Affordable Homes Act, H.4138 (Bond Bill), calling for significant investments in housing as well as policies intended to protect tenants and provide new tools for local communities.

We applaud the Administration for proposing critically needed investments in preserving and creating affordable housing, as well as important policies to allow inclusionary zoning in municipalities by simple majority vote and to pilot social housing models. In addition to these commendable goals, however, we must ensure that this Bond Bill emerges as the comprehensive vehicle we need to meet our housing emergency.

We look forward to working with the Administration and Legislature to strengthen the Bond Bill so it protects our lowest-income residents, renters, homeowners, and communities of color, and fosters equitable growth across Massachusetts. We offer the following recommendations that prioritize the following:

- Preserve existing affordable housing
- Create more deeply affordable housing
- Prevent displacement of tenants and homeowners
- Reduce barriers to attaining housing
- Dismantle structural racism in housing

Decades of disinvestment in affordable housing have resulted in a lack of housing supply and deteriorating housing conditions, while historically racialized housing policies have created persistent segregation. Exploding housing prices are putting safe and stable homes out of reach for low- and moderate-income renters and homeowners, and evictions continue to wreak havoc on vulnerable people, taking a disproportionate toll on people of color.

The preliminary recommendations that follow focus on the housing needs of very low-income people and communities of color. MLRI has drawn these recommendations through our work with grassroots organizations, statewide groups, and broad-based coalitions.

Preserve Existing Affordable Housing

1. **Preservation must be an intentional priority:** As a matter of cost effectiveness and public policy, we urge the Administration to make preservation of existing affordable housing an intentional priority throughout the Bond Bill. There is no question that Massachusetts needs to produce new affordable housing, but by and large it will take less state funds to preserve existing affordable housing than to build new housing. Preserving existing affordable housing, both subsidized and naturally occurring, is generally faster than production; and importantly, preservation will prevent the displacement of residents who for years have had stable housing.

Recommendations: The Bond Bill provides important and significant new investments, including \$800 million for the Affordable Housing Trust Fund (7004-0072), to support private affordable housing preservation and production (doubling the amount from the previous Bond Bill), and \$425 million for Housing Stabilization and Investment Trust Fund (7004-0073), to support preservation, new construction, and rehabilitation projects. We recommend adding language to intentionally prioritize housing preservation across EOHLIC funding programs. The number of units of existing affordable housing (both subsidized and naturally occurring) that are preserved should at least match the number of those newly created. In addition, the state should track the projected number of affordable units needed by income level, along with the number existing affordable units, both subsidized and naturally occurring, and the number being lost over time.

2. **State public housing needs long-overdue capital improvements:** Massachusetts is fortunate to have 44,000 units of state funded public housing, but this housing has lacked investment for decades. The Bond Bill (7004-0074) provides \$1.5 billion for public housing capital projects, close to three times the amount from the previous Bond. It also contains an additional \$100 million for mixed income redevelopment, \$150 million to reduce carbon emissions, and \$15 million for accessibility upgrades. We also applaud Section 36, which seeks to protect the rights of public housing tenants in redeveloped projects by ensuring that their rights continue, that redevelopment results in at least the same number of affordable units that currently exist, and that tenants be provided with technical assistance to help so that they can have meaningful participation in the redevelopment process. This language mirrors most of the language from S. 857/H.1340 which has been heard by the Joint Committee on Housing. The Bond Bill also includes in Section 29, language providing for a less onerous process for housing authorities to merge regionally.

Recommendation for Section 36: In light of the capital backlog and incentives to bring private developers into public housing, it is essential to protect tenants during the redevelopment process. Section 36 should reinstate original language from the S. 857/ H. 1340 to clarify that current tenants cannot be rescreened. Section 36 should further clarify

that tenants will be protected through any improvements or preservation efforts, even if they do not rise to the level of complete redevelopment. See attached mark-up. [Learn more.](#)

Recommendation for Section 29: As more housing authorities start to merge, we recommend that there be clear language in the Bond Bill that provides tenants from all housing authorities merging with opportunity for meaningful input prior to a merger. Mergers have a significant impact on the day-to-day operations, policies, and capital improvements of a housing authority community and it is critical that residents have a voice on matters that impact them. In addition, such language should ensure that tenant commissioners on housing authority boards are proportional as boards grow, with 1 resident for a 5 member board, 2 for a 7 member board, and 3 for a 9 member board. The Board should also be geographically representative of the housing authorities merging. Finally, because the language provides for regional admission preferences it should be clear that such preferences do not violate fair housing provisions as provided by federal law. See attached mark-up.

- 3. Stop the loss of Naturally Occurring Affordable Housing:** “Naturally occurring” affordable housing (NOAH) is housing that has no subsidies or restrictions, but still is affordable. NOAH is a critically important, but often overlooked, part of our affordable housing supply. According to Harvard’s Joint Center for Housing Studies, this kind of housing makes up [75% of affordable rental units in the country](#), and NOAH tends to be the [homes of low-income people of color](#).

Currently, the state’s stock of this unsubsidized affordable housing is rapidly being [lost to speculators](#), who generate large profits converting it to higher rents. Our housing system currently favors investors with [cash in hand](#), at the expense of residents trying to save their homes. We have Chapter 40T to help preserve subsidized housing, but nothing to stem the loss of the huge stock of unsubsidized affordable housing. We need to change this.

Recommendation: Include in the Bond Bill a local option for the Tenant Opportunity to Purchase Act so that municipalities can choose to implement an option to allow existing tenants, when their homes are put up for sale, the opportunity to work with a non-profit or affordable housing developer to purchase the property and keep it affordable. [Learn more.](#)

In addition, we recommend that the Bond Bill include specific policies and programs to help stop the unfettered rapid loss of NOAH, including funding: 1) to preserve Naturally Occurring Affordable Housing; 2) to preserve smaller properties, such as, (a) making Low Income Tax Credits available to small properties under 20 units (which currently cannot use these credits), (b) for replacement reserves to make needed repairs (current funding programs prohibit using funds for this kind of reserve), and (c) to support small property acquisition; and 3) for permanently affordable homeownership units to allow entities like community land trusts to preserve housing.

To support acquisitions that secure housing for long-term affordability, the Bond Bill should include \$25 million for the Small Properties State Acquisition Fund. This Fund provides forgivable loans when an organization buys a home from the market and then maintains it as an affordable rental or sells it at an affordable price to a first-time, income-qualified buyer. We also encourage flexibility in state funds provided for new construction of affordable homeownership, so that groups seeking long-term affordability can provide new homeownership opportunities, too. All the money in the Bond Bill for new construction of first time affordable homeownership currently is committed to the Commonwealth Builder program, which restricts affordability protections to 15 years of affordability in most of the state.

Create More Deeply Affordable Housing

1. **Create a local option for an Affordable Housing Transfer Fee** (Sections 19 and 20): The Bond Bill would establish a local option for municipalities to pass a real estate transfer fee, enabling them to raise urgently needed revenues for affordable housing development. The fee would be a small percentage (between 0.5-2%) of the portion of a sale over \$1 million. This signals the Administration’s support for a transfer fee as a critical tool to raise millions of dollars to fund affordable housing.

Recommendations: As currently drafted, Section 20 would allow Boston and Nantucket to enact their home-rule petitions, but other municipalities may not benefit. To enable all municipalities statewide to benefit the following improvements would be needed:

1. adopt a mechanism so that municipalities whose median home sale price is lower than \$1 million would be able to benefit from a transfer fee;
 2. allow municipalities to assess the transfer fee on the entire value of the transaction, not just the value above the threshold,
 3. allow municipalities to decide whether the seller or purchaser, or combination of the two, will bear the responsibility of paying the fee; and
 4. make it explicit that municipalities may add further exemptions to their transfer fee policies. [Learn more](#)
2. **Clear breakdown of how the funds in each program will be allocated to specific income groups.** In addition, the terms “low or moderate” income are often not defined and, we are unclear how much of the funds will support housing for specific income groups. For example, the Affordable Housing Trust Fund (\$800 million) is aimed at households whose incomes are up to 110% of median income, but there is no target for extremely and very low-income people who are disproportionately affected by the housing crisis.

Recommendation: To ensure the lowest income groups are reached, we suggest a clearer breakdown of how the funds in each program will be allocated to specific income groups.

3. **A statewide housing plan must provide an accurate road map** (Section 8): The Bond Bill will require the Executive Office of Housing and Livable Communities to prepare a comprehensive statewide housing plan at least every five years. The plan must include housing supply and demand data, affordability and affordability gaps, identification of housing affordability challenges and needs by region, and a listing of strategies to address such housing needs.

Recommendation: To provide a true road map it is essential to include language in the Bond Bill that will require the plan to document not only the supply of and demand for affordable housing, but what is affordable to different income levels, what has been lost, what is at risk of loss, and how state resources and policies for preservation and production should be structured and where they should be targeted.

4. **Extremely Low-Income Housing Commission** (Section 102): The Bond Bill creates a new commission to make recommendations to expand the supply of housing that is affordable to Extremely Low-Income (ELI) households earning less than 30% of the Area Median Income. We applaud this much needed laser focus on ELI. Presently there is a shortage of more than 175,000 housing units in Massachusetts affordable to extremely low-income households which must be addressed.¹

Recommendations: We urge that language be included that explicitly includes preservation in Commission's tasks. Preservation is one of the twin pillars of addressing the affordable housing crisis. We also urge that the Commission consider what is contributing to loss of affordable housing, including restricted, subsidized and “naturally occurring” affordable housing. In addition, while the Commission includes a range of organizations, including MLRI, it requires that there only be 1 representative from an organization representing tenants. We urge that there be more than one organization that works with tenants.

What is Extremely Low-Income in Massachusetts for a family of 4?	
Extremely Low-Income is 30% or below the Area Median Income	
Berkshire County	\$29,900
Franklin County	\$29,900
Springfield	\$29,900
Barnstable	\$34,550
Worcester	\$35,100
Brockton	\$35,500
Lowell	\$39,700
Boston	\$44,500

¹ nlihc.org/housing-needs-by-state/massachusetts

5. **HDIP should be a mixed income program:** The Housing Development Incentive Program (HDIP) is a tax credit program that provides millions in tax subsidies for developers of market rate and luxury housing. HDIP does not support any affordable housing, making it a tremendous missed opportunity to use these resources to benefit low- and moderate-income households who have the greatest need. Recently, the HDIP annual tax credit awards were tripled. The state now can spend up to \$30 million every year (\$57 million this year) with not one dollar going to support affordable housing. [Learn more.](#)

Recommendation: This is the moment to reform HDIP as a mixed income program with market rate housing and 20% of the units affordable to very low- and extremely low-income households. Such a requirement should be added to the Bond Bill and should include exemptions for communities with a high share of subsidized housing and those that are unable to attract market rate developers.

Prevent Displacement of Tenants and Homeowners

1. **Access to Counsel for low-income tenants and owner-occupants:** Eviction case filings are on the rise, exceeding pre-pandemic levels, and the inequity of legal representation in Massachusetts is stark. In 2023, only 2.5% of tenants in non-payment cases were represented, while 90% of landlords were represented. Access to Counsel is a critical tool to prevent displacement, prevent homelessness and keep people stably housed but is currently not in the Bond Bill.

Recommendation: We recommend that Access to Counsel bills [H.4360/S.864](#), be included in the Bond Bill. H.4360, was recently reported favorably by the Joint Committee on the Judiciary to the House Committee on Ways and Means. S.864 is currently in the Housing Committee. An Access to Counsel program would be phased in, subject to appropriation, and administered by the Massachusetts Legal Assistance Corporation, which would designate experienced non-profits to provide legal representation. [Learn more.](#)

2. **Foreclosure mediation provisions:** With Massachusetts foreclosures on the rise, better protections for homeowners are overdue. In response to the pandemic, mortgage lenders have increasingly relied on streamlined foreclosure prevention reviews that lack homeowner protections. Holding mediation conferences to allow homeowners and lenders to review options before a foreclosure will prevent unnecessary loss of housing and costly foreclosures.

Recommendation: We recommend including provisions of S.653/H.942, An Act Establishing a Massachusetts Foreclosure Mediation Program, to require mortgage lenders to engage in mediation conferences with homeowners prior to foreclosure in order to explore alternatives to foreclosure. Lenders would also be required to provide accurate loan

information to homeowners. Every New England state plus New York has some form of foreclosure conference or mediation. [Learn more.](#)

3. **Rent Control:** Skyrocketing rents are displacing tenants, destabilizing communities, and destroying historic neighborhoods across our state. Since 2010, the fair market rent for a two-bedroom in MA has increased by 55%. Rent control is a critical tool to prevent displacement. While the Bond Bill makes a number of bold investments to ensure that we are building new affordable homes, nothing in the bill will provide immediate relief for renters while we create the housing stock we need, which will take time.

Recommendation: We recommend that S.1299/H.2103, which were recently heard by the Joint Committee on Housing, be included in the Bond Bill. This legislation is structured as a local option and would enable cities and towns to stabilize rents and provide effective eviction protections at the local level. [Learn more.](#)

4. **Local Option for Tenant Opportunity to Purchase Act (TOPA):** TOPA has a 40-year track record of success in keeping low- and moderate-income tenants in their homes, even as housing prices rise and the neighborhood develops around them. In Washington, DC, TOPA has helped preserve [16,224 affordable units](#) since 2006, and has led to the creation of [4,400 affordable homeownership units, mostly homeowners of color](#), in limited equity cooperatives and the majority located in neighborhoods where housing prices have drastically increased.

Recommendation: We recommend that the TOPA bill, S.880/H.1350, which has been heard by the Joint Committee on Housing, be included in the Bond Bill. The TOPA enabling act would allow cities and towns the local option of allowing tenants the right, together with a non-profit or affordable housing developer, to match a third-party offer when their homes are being sold. TOPA does not regulate sales prices and explicitly exempts small owners. [Learn more.](#)

5. **Make 2-tier eviction processes permanent and prevent tier-1 defaults:** During the Covid-19 pandemic, the Housing and District courts instituted a “2-tier” system for eviction cases. At the initial court event (tier 1), parties are provided with an opportunity to explore resolution of the case. Rental assistance programs such as RAFT (Residential Assistance for Families in Transition) is a key tool to resolving cases and preventing eviction. We are grateful that the legislature made “chapter 257” eviction protections permanent in the FY24 budget to protect tenants whose evictions could be resolved with rental assistance funds, but maintaining the two-tier eviction system is critical to the effectiveness of those protections.

Recommendation: We urge that the Bond Bill adopt provisions of S1048/H1682, An Act

relative to summary process and rental assistance, into law, which would return the court to the pandemic-era practice of not entering defaults against tenants at the tier one event.

Reduce Barriers to Attaining Housing

1. **Eviction Record Sealing Protections** (Section 47): As soon as an eviction case is filed, a tenant has a publicly available eviction record. Regardless of whether they did anything wrong, paid back rent owed, won their case, or were actually evicted, the mere fact that they were party to an eviction is being unfairly held against tenants when they try to rent a new place. The HOMES Act, [H.4356](#) was recently reported favorably by the Joint Committee on the Judiciary and included new language providing that tenants whose cases are dismissed or who win can petition to seal their record. There are, however, significant differences between the HOMES Act and Section 47.

Recommendation: We urge you to substitute Section 47 in H.4138/The Affordable Homes ACT with H.4356/HOMES Act with modifications making the sealing process automatic for eviction cases that are dismissed, decided in a tenant's favor or are no-fault cases, instead of a tenant having to file a petition. This will make the sealing process more efficient for courts and more effective for tenants. Attached is a letter sent on March 14, 2024 to the Bonding Committee with the version of the HOMES Act that we seek to include in the The Affordable HOMES Act.

Dismantle Structural Racism in Housing

1. **New Office of Fair Housing** (Sections 10 and 11): The Bond Bill would establish a new Office of Fair Housing at EOHLC that would be responsible for collaborating with state agencies and municipalities to advance the elimination of housing discrimination and the Commonwealth's duty to affirmatively further fair housing. It would also support enforcement of all fair housing laws, facilitate interagency initiatives to address the social and economic determinants of housing disparities including equal access to quality and affordable housing, and would administer a new Fair Housing Trust Fund. Initiatives eligible for assistance from the trust fund include private enforcement, education and outreach, fair housing testing, lending discrimination, and affirmatively furthering fair housing. The Bond Bill further requires that once every 5 years, the office must prepare a report evaluating the progress of the state toward eliminating housing discrimination and affirmatively furthering fair housing and must hold public hearings to gather public information on the topics of the report.

Recommendations: We urge that the Bond Bill require that public input and public comments be included in every aspect of the work of the Office of Fair Housing, that the report include testimonies from people who have experienced discrimination, and where possible benefited from fair housing initiatives, and that there be a priority in data

transparency. If required quantifiable measures and comparative benchmarks are not available, the Office should explain why that information is not available. There should also be established an accessible complaint portal and process to file discrimination complaints and a priority established to fund significant public education initiatives.