
Surplus Lands and Community Rights:

A Look at Proposed Changes to Land Disposition Laws



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*Building Connections, Advancing Solutions
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Introduction

On June 30, 2005, the state's controversial "fast track auction law" was allowed to expire. The previous Chapter 7 safeguards were restored.

In July 2005, new legislation was unveiled that would sweep away Chapter 7 provisions and radically change the rules for surplus land and for many other properties.

These slides are intended to help you understand both the proposed new law (H4278) and the current laws that would be replaced.

Chief Concerns

H4278 A Surplus Land Privatization Bill?

As we shall see, this bill has three main goals:

- **Privatize public lands**
- **Disempower communities**
- **Liquidate state assets**

Background and Definitions

Total state lands – 601,185 acres

EOEA – 558,347 acres (313,000 acres DEM)

Current “surplus” properties –2000 acres (DCAM)

DCAM – Department under EOAF, David Pirini, Commissioner

Chapter 7 – State laws governing disposal of state lands

Reuse Committee – appointed local group charged with writing “reuse plan” for surplus property.

MassDevelopment – quasi-state agency for promoting private economic development projects (Has been criticized for inadequate planning, public input and civic oversight).

Surplus Land

“Surplus” Chp. 7 – common sense

- **Current and foreseeable state and local needs (local housing authorities, etc.)**
- **Local legislator, accountable to affected community, sponsors specific transfer legislation, approved by legislature.**

“Surplus” H4278 - convoluted

- **“Surplus to current and foreseeable state needs” only.**
- **DCAM, A&F, SLCC (governor’s appointees) decide.**
- **Excludes property disposed of through MassDevelopment.**
- **If MDFA declines->SLCC (governor’s appointees).**

Current Chapter 7

Checks and balances – State agency process, community involvement, legislative approval (key role of local legislator)

Accountability – Legislative and local

Transparency - Local re-use committee planning process, local hearings, transfer legislation

Community rights respected – Consideration of local plans, local legislator is gate-keeper

Merits of Chapter 7

"(Chapter 7) was more democratic and it **preserved the local towns' and cities' rights to provide input as to the potential uses of public land. . . That's the crux of the issue: It's local rights for public land."**

- Waltham City Councilor George Darcy, Boston
Globe, 4/11/05

"Under the old system, every sale had to go through the Legislature, so that **gave local communities leverage."**

- Rep. Thomas M. Stanley, 4/11/05

Motivations for H4278

"The process for disposing of state assets is badly broken . . . Special legislation is drafted that dictates what can and can't be done. You end up with a master plan that the local community drives."

- Michael Hogan, president of MassDevelopment, quoted in Boston Globe, 12/23/02

"We have all this state surplus land that we can zone ourselves without interference of local municipalities. We'll do that, give them a five-year tax break, and all they've got to do is promise to create at least 100 jobs and grow by 5 percent a year."

- Rep. Salvatore DiMasi, 3/18/05

"Why should we sell off state land for a quick cash infusion when you can leverage these properties for long-term sustainable investment by the private sector?"

- Rep. Salvatore DiMasi, Boston Globe, 1/05

Many Possible Reuse Goals

- **housing**
 - affordable
 - demographic needs
 - lifelong residency
 - **environment**
 - clean air, water
 - greenspace
 - natural resources
 - noise
 - good land use
 - **transportation**
 - congestion relief
 - public transportation
 - noise/pollution reduction
 - **economic**
 - expansion of large corporations
 - community-based economic development
 - agricultural preservation
 - **infrastructure & services**
 - municipal services (schools, trash, cemeteries, recreation)
 - access to health care
 - sewers
 - property tax revenues
 - **cultural**
 - democratic empowerment
 - historic preservation
 - diversity
- top priority under 4278* →

H4278 (Jones-Stanley)

- *Privatize public lands*
- *Disempower communities*
- *Liquidate state assets*

Viewpoints on H4278

Supporters

“The Stanley-Jones bill, H3840, now referred to as H4278, addresses the needs of all interested parties and is a much better land disposition process than either M.G.L. Ch. 7 or “548”.

- Rep. Thomas Stanley, letter, August 2005

“I urge the committee to support the Jones/Stanley bill”.

- DCAM Commissioner David Perini, State House hearing, 5/11/05

Concerns

“One of the concerns (of lawmakers) was should the Legislature essentially give its authority on the matter of state land over to the governor through the state agencies.”

- Rep. James Eldridge, D-Acton, Daily News-Tribune, 7/22/05

“I am against it. . . (MassDevelopment) can develop with a third party and the cities and towns would have no say.”

- Mayor Jeanette McCarthy of Waltham, 7/22/05

Chapter 7 vs. H4278

Compliance with local plans and state policies

Chapter 7

“[The Commissioner] shall **identify restrictions**, if any, on the property's use and development necessary to comply with established **state and local plans and policies.**”

[40F]

H4278

[provision deleted]

H4278 does not acknowledge need to comply with local plans or state policies.

Chapter 7 vs. H4278

Reuse Committees

Chapter 7

“The commissioner may convene an **advisory committee** to advise him on reuses and to recommend **reuse restrictions** for property declared surplus. If an advisory committee is convened, the commissioner shall invite the representatives to the general court from the city or town in which the property is located to serve on the committee. The commissioner shall prepare a **preliminary report** on his findings, which shall include both his recommendation, and those of the advisory committee if established, for reuse restrictions for the property.”

[40F]

H4278

“Surplus real property. . . excluding real property for which there is an established local reuse plan“

H4278 accepts existing reuse plans, but does not acknowledge reuse committees.

Chapter 7

“If he **determines that such property is surplus** to both the current and foreseeable needs of state agencies, the commissioner shall determine whether any other **public agency** has a current or foreseeable direct public use for the property. . . does include lease of the property by local housing authorities to public housing tenants.”

[40F]

H4278

[provision deleted]

Non-state public agencies lose their right to propose a reuse.

Chapter 7

[Offer from municipality accepted at discretion of DCAM, presumably at fair market value.]

H4278 guarantees municipality opportunity to purchase before any sale. However, there are penalties for failure to close the sale.

H4278

“The host municipality shall have the right of first refusal to purchase the surplus property for a direct public use at **85 per cent** of the fair market value of the property. . . . must be exercised, if at all, by the host municipality within **90 days**. if said failure to close on the purchase of the property was in bad faith, the commonwealth **shall not be required to share proceeds of the sale with the host municipality**”

[5a]

State Surplus Land Coordinating Committee

Membership

- 1) Executive Office of Administration and Finance
- 2) Executive Office of Transportation and Construction
- 3) Mass. Office of Business Development
- 4) Executive Office of Environmental Affairs
- 5) Department of Housing and Community Development
- 6) Division of Capital Asset Management
- 7) Mass. Municipal Association
- 8) Commonwealth Development Coordinating Council
- 9) Mass. Development Finance Authority
- 10) Mass. Association of Regional Planning Agencies
- 11) Mass. Association of Community Development Corporations.

- **SSLCC is dominated by gubernatorial appointees.**
- **Most appointees are from agencies promoting development or fiscal objectives.**

Key Reuse Decision-makers (H4278)

Under H4278

Development of Proposals:

- Executive Office of Administration and Finance
- Division of Capital Asset Management
- Mass. Development Finance Authority
- Regional Planning Agency

If sold, veto can be cast by:

- House of Representatives
- Senate

No Explicit Decision Role

- Local Planning Board
- Local Conservation Commission
- Local Fair Housing Commission
- Local Agricultural Commission
- Local Transportation Committee
- Local Mayor/Board of Selectmen
- Community Preservation Act Comm.
- Local land trusts
- Local state rep
- Local state senator

One-stop Permitting

Notwithstanding any other general or special law to the contrary, **each public or state agency in the commonwealth** involved in the permitting, development or financing of economic development projects is hereby authorized and directed to develop a coordinated **one-stop program** for businesses, institutions and private parties that may intend to locate in the real property in order to enable development activities within such real property to be more effectively promoted by the commonwealth.

[Ref: H4278, Section 4(b)]

One-stop permitting has been described by real estate lobbyists as a way of bypassing normal review and permitting processes and giving a single pro-development bureaucrat an ability to issue all necessary permits. The specifics of any such proposal deserve careful discussion.

Special Permits

“Zoning ordinances or by-laws shall also provide that **research and development uses**, whether or not such uses are currently permitted as a matter of right, may be **permitted in any non-residential zoning district** upon the issuance of a **special permit** provided the granting authority finds that such uses do not substantially derogate from the public good. “Research and development uses” shall include any 1 or more of investigation, development, laboratory and similar research uses and any related office uses and, subject to the following limitations: limited manufacturing uses and uses accessory to any of the foregoing in any field of science.

“**Limited manufacturing**” shall, subject to the issuance of such special permit, be an allowed use provided that the following requirements are satisfied: (1) such manufacturing activity is **related to research uses**; (2) no manufacturing activity customarily occurs **within 50 feet of a residential district**; and (3) substantially all manufacturing activity customarily occurs inside of buildings with any manufacturing activities customarily occurring outside of buildings subject to such conditions as may be imposed in the special permit.”

[Ref: H4278, Section 11]

This provision weakens the zoning process for all non-residential land, not just state surplus land.

H4278 (Jones-Stanley)

- **Overriding reuse priority: privatization**
 - Right of first refusal to MassDevelopment
 - MassDevelopment plans automatically qualify for state aid
 - State agencies required to provide “one-stop permitting”
 - Municipalities required to weaken zoning.
- **Affects may extend far beyond state surplus lands**
 - Zoning process weakened and made less democratic
 - Opens door to “One-stop permitting” that weakens scrutiny and controls
- **Local planners and affected citizens marginalized**
 - Gubernatorial appointees control the process
 - No role for local reuse committees
 - No requirement for compatibility with local planning
 - Only one or two public hearings required, and they are merely advisory
 - Ineffective provision to allow local purchase of property
 - Penalties imposed if community does not cooperate with state

(continued)

H4278 (Jones-Stanley)

(continued)

- **Elimination of Chapter 7 rights and protections.**
 - No need to consider established local plans
 - No right of acquisition by non-state public agencies
 - No right to transfer under legislation subject to amendment
- **Community right to purchase is problematic**
 - Purchase usually infeasible due to high land costs and fiscal crises of communities
 - Not possible for less wealthy communities for whom public lands are most important
 - H4278 imposes penalties on communities that try but fail to raise the cash
 - Purchase bypasses the “smart growth” process
- **Lack of accountability invites insider deal-making**
 - Key decisions made by gubernatorial appointees
 - Safeguards against influence-peddling weakened
 - Legislative approval can be obtained automatically (without a vote)
 - Expedited process facilitates wiring the transfer

Highest and Best Use

Highest and best use is defined as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the **highest value**."

[Ref: The Appraisal of Real Estate, twelfth edition, p. 305]

" Highest and Best Use is the **highest and most profitable use** for which a property is adaptable and needed, or likely to be needed, in the near future. Only that use which is physically possible, legally permissible, financially feasible, and maximally productive shall be considered in the analysis of highest and best use (UASFLA, 1992, p. 8). A non-economic highest and best use is not a proper basis for the estimate of market value and, accordingly, **a highest and best use of conservation, preservation**, or other use that requires the property to be withheld from economic production in perpetuity, is **not a valid use upon which to estimate market value**."

[Ref: Reclamation Manual, US Bureau of Reclamation]

The emphasis upon so-called "highest and best use" in H4278 biases the disposition process toward intense private development rather than public-interest uses.

Issues Specific to the City of Waltham

Section 16

“Most importantly, the two-thirds legislative vote requirement will provide Waltham and Lexington with the greatest protection available from unwanted development on all state- owned land within their borders. “

- Rep. Thomas Stanley, letter, August 2005

SECTION 16. Notwithstanding the provisions of this chapter, or any other general or special law to the contrary, any state owned real property in the city of Waltham, including but not limited to, the Fernald state school, so-called, and any state owed real property in the city of Waltham and the town of Lexington, including, but not limited to, the former Middlesex state hospital, so-called, shall not be conveyed, leased or otherwise disposed of except by laws enacted by a two thirds vote, taken by the yeas and nays, of each branch of the general court.

Waltham/Lexington Considerations

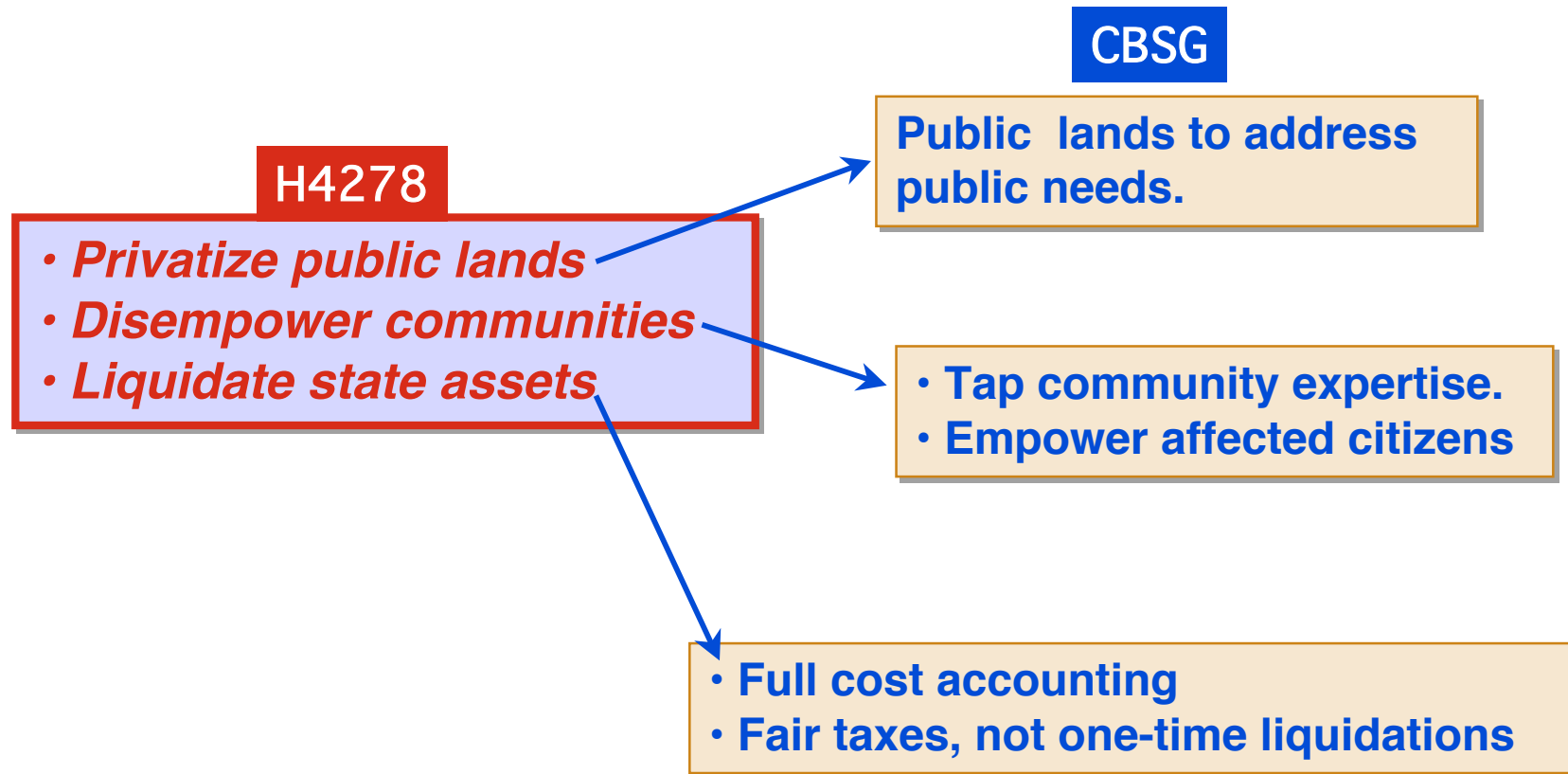
Section 16 requires that land that is wholly within Waltham or partly within Lexington and Waltham be transferred only by legislation approved by a two-thirds vote of the Legislature. (Waltham is the home of Rep. Thomas Stanley, a key sponsor of the bill. A minority part of his district lies in Lexington.)

What are the implications?

- All provisions of H4278 that encourage development still apply to Waltham and Lexington.
- The 2/3 requirement does not apply to lands in Lexington that do not lie at least partially in Waltham.
- The requirement for a 2/3 vote is not effective protection. Article 97 open space, which should be more difficult to transfer than mere surplus land, is also “protected” by a 2/3 vote requirement. According to MASSPIRG “The last three decades have demonstrated, however, that **a two-thirds majority has not been difficult to obtain.** Since 1989, the Legislature has approved 280 land transfers. Fifty five percent of those transfers have converted publicly owned open space into privately developed land and the road and water infrastructure to support it.²”
- People in other communities have complained at the attempt to shield the municipality of the bill’s sponsor the effects of the bill. If this provision is removed, Lexington and Waltham will be treated the same as other municipalities.

Community-Based Smart Growth: An Alternative Approach

Community-Based Smart Growth



Community-Based Smart Growth

- Through a **locally-based reuse committee**, local residents and officials become the key decision-makers.
- Use **regional guidelines** to promote open space protection, affordable housing and local economic development.
- **Safeguards** protect against insider deals and conflicts of interest.
- Sufficient time and transparency allow **public participation** and the development of the best reuse alternatives.
- **Recorded votes** required when key decisions are made.
- State-level oversight provided by **smart growth planners**, not a fiscal or budgetary agency.
- Land transferred to municipality at **no cost** if a **compelling public need** will be served.
- Municipalities are not forced to raise **property taxes** in order to keep public land in public hands.
- Reuse must be **compatible with local planning** and consider critical local needs.
- Long-term leases are treated as permanent dispositions, subject to **full scrutiny** and community-based planning.
- **Community-based redevelopment authorities** can be established to enable development that meets community needs.

MCHC Urges the Public to Speak Up

Speak Up Now

- On July 21, 2003, the text of H4278 was released **24 hours** before it was to be voted upon. It contained numerous new, far-reaching provisions that had been written in secret.
- H4278 was approved by legislative committee in **one day without public hearings**.
- H4278 would now be the law if it were not for quick protests by citizens statewide and by certain concerned legislators.

If you are concerned about this bill, we urge you to **speak up now**. Experience indicates that for measures such as H4278, the public may well be denied adequate notice, public hearings, open debate, or an opportunity for affected people to express their concerns to their legislators. Secrecy regarding the text of these bills is a technique employed to avoid scrutiny and frustrate the democratic process. If your community would be hurt by H4278, you must speak up now.

Please Ask Your Legislators to

- **Stop the rush to lock in H4278 or other new, poorly scrutinized surplus laws that disempower communities.**

These bills take away community-planning rights and allow the Department of Capital Asset Management to sell off surplus lands without legislative or local accountability.

- **Allow ample time for statewide hearings and local input to develop new community-based surplus legislation.**

Such legislation should respect local planning rights and expertise, while providing guidelines for open space protection and the creation of affordable housing.

Thank You!