



Joint Legislative Budget Hearing on Housing Programs

February 14, 2024

Testimony of Michael McKee, Treasurer

Thank you for the opportunity to testify about the state housing budget. I particularly want to thank Senate Finance chair Liz Krueger and Assembly Ways and Means chair Helene Weinstein, and the two Housing Committee chairs, Senator Brian Kavanagh and Assembly Member Linda Rosenthal.

A new way to think about housing production

Last week Senator Cordell Cleare and Assembly Member Emily Gallagher introduced S8494/A9088. This bill creates a new *Social Housing Development Authority* designed to purchase and improve existing housing and convert it to social housing, and construct and maintain a variety of mixed income homes for residents all over New York State. The housing will be genuinely and permanently affordable, union-built, beautiful, and green. Tenants PAC strongly supports this legislation and urges members of the legislature to enact it this session.

Some of you (including both Housing Committee chairs) joined a group of tenant advocates on a week-long field trip to Vienna in October 2022. We saw dozens of housing developments sponsored by the City of Vienna that were beautiful, designed by top architects, constructed with the highest standards, and with all sorts of amenities including public art. 25% of Viennese live in public housing owned and operated by the City, some of it built almost a century ago and still fully occupied and in excellent repair. Another 37% of Viennese live in subsidized housing including what we would call limited-equity coops. There is a mix of incomes and all but the most affluent Viennese are eligible for social housing. All

this housing was planned, financed, and built by the City of Vienna, and the City builds new housing every year. Rents are remarkably low, and its social housing is a major reason Vienna is chosen year after year as the most livable city in the world.

We can do the same. It's not pie in the sky. Think BIG. Perhaps it is time for another trip to Vienna with more of you joining us.

421-a: Socialism for the rich

The definition of insanity is doing the same thing over and over and expecting a different result. That is what New York State has been doing for decades: giving private, profit-making developers – including some of the richest people on the planet – billions of dollars in subsidies to construct luxury, market-rate housing, in return for which we get a tiny number of “affordable” apartments which are not affordable to most working New Yorkers, and are not even always permanently affordable.

Crain's New York Business reported on January 27, 2022 that since 2016, New York City had gained a total of 9, 071 “affordable” units through 421-a. That is beyond pathetic. Governor Hochul is now promoting yet another rebranding of this failed program, giving it yet another numerical moniker. Enough. You bravely ended this boondoggle and it would be a mistake to resurrect it. And even though no new subsidies can be granted, this fiasco is still costing the City of New York \$1.8 billion a year in lost tax revenue, and will continue to cost the City in future years.

And let me remind you that most of these landlords ignore the 421-a requirements to comply with rent stabilization. Neither the City nor the State does anything to enforce this, which is why so many landlords get away with flouting the law.

Prohibition of Evictions Without Good Cause

We urge you to include S305/A4454 (Salazar/Hunter) in the budget. Kathy Hochul has stated that New York State has more tenant protections than any other state and we don't need any more. That ignores the reality that some 1.6 million New Yorkers – roughly half the renters in the state – live in unregulated apartments and have no protections against termination of their tenancies for any reason or

no reason. Their only possible defense to a no-cause holdover is retaliation, which is virtually impossible to prove.

There is a huge amount of misinformation out there about this bill. It is not rent control, not even close. The measure merely gives tenants a defense against a no-cause eviction, IF the tenant chooses to stay and fight. We know from experience that many tenants will not, either from fear, from the lack of a lawyer (especially hard to obtain outside NYC), and/or from ignorance that they might have a defense to an unfair eviction. Organizers are always telling tenants, Don't self-evict. Sadly, many of them do.

The bill does not stop landlords from raising rents by any amount they choose; it simply gives judges a benchmark to determine whether a landlord is justified in raising the rent by more than 1.5 times the rate of inflation, or if the landlord is simply trying to price a tenant out. This is not a rent cap, a common misstatement; it is a rebuttable presumption. And despite repeated inaccurate descriptions, there is nothing in the bill that would require a landlord to renew any tenant's lease. It does give a brave tenant leverage with which to negotiate a lease renewal. Most importantly, it also provides protection to tenants seeking to force bad landlords to make repairs, as no longer can the expiration of a lease or absence of one be grounds for eviction.

These protections are quite moderate, nothing close to the protections of rent controls. For five years in a row, the legislature has failed to pass this bill. And thousands of unregulated tenants have been evicted during that time.

Why has the real estate lobby spent millions of dollars mis-characterizing this bill as universal rent control, lease for life, etc.? Because they fear it? I don't think so. The landlord class understands that Good Cause Eviction is a gateway drug for rent control. In this, they are correct. When the City of Newburgh held a public hearing on opting into the Emergency Tenant Protection Act on December 11, landlords testified that they were in favor of "reasonable tenant protections such as Good Cause Eviction," but begged the City Council not to subject them to ETPA because the sky would fall. It was comical.

Housing Access Voucher Program

This legislation, S568B/A4021A (Kavanagh/Rosenthal), has also been held up for too many years. For too long we have allowed government to get away with managing homelessness instead of ending it, building shelters instead of building

housing. And for our unhoused neighbors who do find an apartment, the lack of a Section-8 type voucher is a huge barrier. Vouchers are not a complete housing strategy, but they are a necessary component. HAVP will provide Section 8-type vouchers to persons and families who need housing. This bill will help get our sisters and brothers out of shelters and off the streets and into housing, and will be a crucial lifeline for renters at risk of losing their housing.

Not passing this bill and not funding it for yet another year would be immoral.

Tenant Opportunity to Purchase Act

This bill, S221/A3353 (Myrie/Mitaynes) gives tenants the right to make the first offer on their building if the landlord wants to sell, and provides resources to help the tenants or a nonprofit partner buy the property. This is an important tool to prevent displacement, especially in low-income communities of color targeted by speculators. TOPA will preserve affordability by converting these buildings to social housing. TOPA is an integral part of an overall affordable housing program and it is time this bill was enacted.

NYS Division of Housing and Community Renewal Office of Rent Administration

Since enactment of the Emergency Tenant Protection Act of 1974, and since the 1984 transfer of administration of NYC rent stabilization from the real estate industry to ORA as mandated by the Omnibus Housing Act of 1983, the DHCR Office of Rent Administration has taken a lackadaisical approach to enforcement. Part of this is the design of the rent stabilization system, which allows landlords to get away with murder unless a tenant files a complaint. But a large part is the culture at ORA, which has always approached its task as finding some middle ground between landlords and tenants – in many instances letting landlords off the hook for their failure to comply with the law – instead of enforcement of the rent laws with the primary purpose of tenant protection and preservation of the affordable rental housing stock. ORA has adopted numerous policies to discourage tenants from filing complaints, not in my opinion because of pro-landlord bias but from a desire to keep its workload down.

The only transformational part of the Housing Stability and Tenant Protection Act of 2019 was ending the arbitrary geographic restrictions in place since 1974 and expanding applicability of ETPA to all 62 counties in the state, thus allowing any city, town, or village anywhere in the state to opt into the system. Everything else

in HSTPA was “stopping the bleeding” by repealing vacancy decontrol and other mechanisms that were taking units out of regulation and pricing residents out of their homes in the downstate region. (Part M of HSTPA also contained substantive and procedural protections for both regulated and unregulated tenants, but these mild reforms could hardly be considered transformational.)

Since enactment of HSTPA, two upstate municipalities have voted to opt into the ETPA. The City of Kingston was the first, effective August 1, 2022. Two months ago, the City of Newburgh City Council voted unanimously to adopt ETPA, effective December 18, 2023. More cities are in the pipeline, including Poughkeepsie, Albany, Rochester, and Ithaca.

As more cities throughout the state adopt rent and eviction controls, politics in this state will be changed for the better – tenants will have the ability to remain in their homes without fear of arbitrary or retaliatory eviction, and without the fear of being priced out.

Which brings me back to DHCR/ORA. For the last two years, I have worked closely with Kingston tenants, tenant organizers and tenant attorneys on implementation of ETPA. Once Kingston opted in, many landlords engaged in egregious misconduct, ignoring the fact that the City had adopted a rent control law. Many landlords demanded, on threat of eviction, that tenants sign illegal leases and pay illegal rent increases. Used to a situation where the landlord had all the power and could dictate terms, and receiving conflicting advice and information, many tenants signed. Other ETPA tenants were evicted despite now being subject to ETPA and protected from arbitrary eviction.

ORA did nothing to counter this landlord misbehavior. In my view, and coming upon the May 29 fiftieth anniversary of enactment of ETPA, the agency is hopeless. Something radical is needed.

We are now seeing the same kind of landlord misconduct in Newburgh. It seems likely that this will be the pattern in every new municipality that adopts ETPA.

I refer you to my chronicle of these events, “*Lessons from Kingston, New York*” which is available at nytenantpac.org, on the ETPA page. Related information to upstate ETPA implementation is also available at this link, including the memo, “*How to make sure your vacancy survey survives a court challenge by landlords.*”

There is an urgent need for legislative reform of this weak rent regulation system before more upstate municipalities opt in. Housing Justice for All is preparing a package of reform bills that will address some of these issues.

But what is also needed is legislative reform to mandate that the state housing agency charged with enforcing our rent laws actually enforce them. Honestly, I believe a public oversight hearing on this subject is overdue.

In the meantime, I welcome the opportunity to discuss these problems with any legislator or member of your staff.

Thank you again for the opportunity to testify today. We look forward to working with you throughout the session to strengthen and expand rent and eviction protections, improve enforcement of our rent laws, and protect and expand our affordable housing stock.

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