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House, No. 3689

Presented by: Frank I. Smizik

For legislation to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing

1/20/2009H Referred to the Joint Committee on Housing

1/20/2009S Senate concurred

Public Hearing date 5/5 at 10:30 AM in Hearing Room A1

6/24/2009H Accompanied a new draft, see H04132

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HOUSE No. 3689

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act authorizing municipalities to protect low and moderate income tenants and units of governmentally involved housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	15th Norfolk
Geraldo Alicea	6th Worcester
Carlo P. Basile	1st Suffolk
William N. Brownsberger	24th Middlesex
Gloria L. Fox	7th Suffolk
Kay Khan	11th Middlesex
Peter v. Kocot	1st Hampshire
William Lantigua	16th Essex
Elizabeth A. Malia	11th Suffolk
David M. Nangle	17th Middlesex
Sarah K. Peake	4th Barnstable
Michael F. Rush	10th Suffolk
Tom Sannicandro	7th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Brian P. Wallace	4th Suffolk
Alice K. Wolf	25th Middlesex
Paul Kujawski	8th Worcester
Bruce J. Ayers	1st Norfolk

Ellen Story	3rd Hampshire
David B. Sullivan	6th Bristol
Joyce A. Spiliotis	12th Essex
Martin J. Walsh	13th Suffolk
John J. Binienda	17th Worcester
Willie Mae Allen	6th Suffolk
Antonio F.D. Cabral	13th Bristol
Mary E. Grant	6th Essex
Kevin J. Murphy	18th Middlesex
Alice K. Wolf	25th Middlesex
John P. Fresolo	16th Worcester
Louis L. Kafka	8th Norfolk
Bill Bowles	2nd Bristol
James Cantwell	4th Plymouth
James J. O'Day	14th Worcester District
Steven M. Walsh	11th Essex
Benjamin Swan	11th Hampden
Matthew C. Patrick	3rd Barnstable
Ellen Story	3rd Hampshire
Carl M. Sciortino, Jr.	34th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1284 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AUTHORIZING MUNICIPALITIES TO PROTECT LOW AND MODERATE INCOME TENANTS AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40P the
2 following chapter:

CHAPTER 40Q.

3 PROTECTION OF LOW AND MODERATE INCOME TENANTS AND UNITS
4 OF GOVERNMENTALLY INVOLVED HOUSING.

5 Section 1. The general court finds and declares that: (a) a serious public emergency exists
6 with respect to the housing of a substantial number of persons in certain areas of the
7 commonwealth residing in governmentally involved housing, inasmuch as there is a threat that
8 many low-income individuals and families residing in such housing, particularly those elderly
9 and disabled, may be threatened with displacement as a result of prepayment of mortgage
10 financing, loss of use or rent restrictions, expiring subsidy contracts, and expected increases in
11 rent, and there is a threat that affordable housing stock will be lost due to expiration of use or
12 rent restrictions and such pre-payment, further exacerbating an extreme housing shortage for
13 low-income families and individuals; (b) it is the commonwealth's policy to encourage owners of
14 this governmentally involved housing to accept incentives to keep such housing affordable and
15 avert displacement; (c) such emergency should be met by the commonwealth immediately and
16 with due regard for the rights and responsibilities of its local communities; therefore, this chapter
17 is declared to be in the public interest.

18 Section 2. The following words or phrases as used in this chapter shall have the
19 following meanings:

20 (A) "governmentally-involved housing," means any residential housing project constructed,
21 rehabilitated, or assisted pursuant to any one or more of the following governmental programs:

22 (1) section 202 of the Housing Act of 1959, 12 U.S.C. section 1701q;

23 (2) section 221(d) of the National Housing Act, 12 U.S.C. section 1715l(d);

24 (3) section 236 of the National Housing Act, 12 U.S.C. section 1715z-1;

25 (4) any project-based programs for low-income persons under section 8 of the United
26 States Housing Act of 1937, 42 U.S.C. section 1437f;

27 (5) the Rent Supplement Program under section 101 of the Housing and Urban
28 Development Act of 1965, 12 U.S.C. section 1701s;

29 (6) the U.S. Department of Agriculture's Rural Rental Housing Program under section
30 515 of the Housing Act of 1949, 42 U.S.C. section 1490a;

31 (7) the Urban Development Action Grant, hereinafter referred to as UDAG, 42 U.S.C.
32 section 5318, or the Housing Development Action Grant, hereinafter referred to as HoDAG, 42
33 U.S.C. section 1437o, in either case to the extent the project's rents are restricted or regulated
34 pursuant to a grant agreement with the U.S. Department of Housing and Urban Development or
35 otherwise;

36 (8) the federal low-income housing tax credit program under section 42 of the U.S.
37 Internal Revenue Code, 26 U.S.C. section 42;

38 (9) chapter 121A of the General Laws to the extent the chapter 121A approvals restrict
39 the affordability of the project's dwelling units;

40 (10) section 13A of chapter 708 of the Acts of 1966, as amended;

41 (11) section 811 of the Cranston-Gonzalez National Affordable Housing Act, as
42 amended (42 U.S.C. section 8013);

43 (12) section 207 of the National Housing Act, 12 U.S.C. section 1713, and subject to a
44 rent regulatory agreement pursuant to chapter 121A of the General Laws;

45 (13) section 220 of the National Housing Act, 12 U.S.C. section 1715k(a) and (h), and
46 subject to a rent regulatory agreement pursuant to chapter 121A of the General Laws; or

47 (14) the project-based Massachusetts Rental Voucher Program, so-called (see line item
48 7004-9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part 49.00)

49 For purposes of this section, "governmentally involved housing" shall not include the
50 following: (1) housing units owned or acquired by the municipality through tax foreclosure; (2)

51 housing units in a one to ten family building or structure that is not part of a larger housing
52 development, whether on one or more sites; (3) structures containing housing units subsidized
53 with mobile tenant-based rental assistance that would not otherwise come within the definition of
54 governmentally involved housing; (4) structures containing housing units which were subject to
55 chapter 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the acts of 1970,
56 chapter 843 of the acts of 1970; chapter 843 of the acts of 1971, chapter 45 of the acts of 1987,
57 chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which would otherwise
58 not come within the definition of governmentally involved housing; (5) public housing owned or
59 operated by a local housing authority under chapter 121B, the United States Housing Act of
60 1937, or any successor act or public housing programs formerly assisted under the United States
61 Housing Act of 1937; (6) housing units which first became governmentally involved after
62 October 1, 1996, unless the municipality enacts a different date; and (7) housing units where the
63 sole government involvement is the owner's participation in federal, state, or municipal funded
64 programs for home repairs, energy conservation, or lead paint abatement.

65 (B) "Formerly governmentally involved housing", housing which was governmentally
66 involved as of July 1, 1994, or which became governmentally involved housing after July 1,
67 1994, but which is no longer governmentally-involved as defined in this section.

68 (C) "Low-income", an annual income which is 80 per cent or less of the median
69 income for the area as determined by the United States Department of Housing and Urban
70 Development, with adjustments for smaller and larger families.

71 Section 3. (a) Notwithstanding the provisions of any general or special law to the
72 contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a
73 municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy
74 of governmentally involved or formerly governmentally involved housing to the extent such
75 regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966,
76 once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer
77 exists; (b) Said municipality shall establish as the maximum rent for governmentally involved and
78 formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six
79 months before the basis for federal or Massachusetts Housing Finance Agency rent preemption
80 lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of
81 the date of the loss of preemption.

82 Section 4. (a) In a municipality accepting the provisions of this chapter, no person
83 shall bring an action to recover possession of a governmentally involved or formerly
84 governmentally involved housing unit to the extent that such regulation is not otherwise
85 preempted by federal law or section 6 of chapter 708 of the acts of 1966, unless: (1) the tenant
86 has failed to pay the rent to which the owner is entitled; (2) the tenant has violated an obligation
87 or covenant of tenancy not inconsistent with chapter 93A or this chapter other than the obligation
88 to surrender possession upon proper notice, and has failed to cure the violation after having
89 received written notice thereof; (3) the tenant is causing, committing or permitting, a nuisance in,
90 or substantial damage to, the housing unit, or is creating substantial interference with the
91 comfort, safety, or enjoyment of the owner or other occupants of the same or any adjacent unit;
92 (4) the tenant has used or permitted use of a housing unit for illegal purposes; (5) the tenant, who

93 had a written lease or rental agreement which has terminated, has refused, after written requests
94 or demand by the owner, to execute a written extension or renewal thereof for a further term of
95 like duration on terms not inconsistent with or violative of any provision of this act; (6) the
96 tenant has refused the owner reasonable access to the housing unit for the purpose of making
97 necessary repairs or improvements required by law, or for the purpose of inspection as permitted
98 or required by the lease or by law, or for the purpose of showing the housing unit to any
99 prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a
100 subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the
101 owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy
102 or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren,
103 parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-
104 law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the
105 provisions and purposes of this chapter or chapter 93A.

106 (B) The provisions of this section shall be construed as additional restrictions on the
107 right to recover possession of such housing units.

108 Section 5. In a municipality accepting the provisions of this chapter, no person shall
109 remove any governmentally involved or formerly governmentally involved housing unit from
110 low-income rental housing use; without first obtaining permission for that purpose from the
111 municipality or its designee, to the extent that such provision is not preempted by federal law or
112 section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and
113 conditions not inconsistent with the purposes and provisions of this chapter, including, without
114 limitation, (a) incentives to continue in effect the low-income use restrictions previously in place
115 for the property and (b) where sale, lease, or disposition of the property may result in the loss of
116 all or a portion of the property for low-income rental housing use, the right of an incorporated
117 tenant association in such housing, the municipality, the local housing authority, or non-profit
118 community development corporations to negotiate for, acquire and operate such property on,
119 substantially equivalent terms and conditions as offered or available to a bona-fide third-party
120 purchaser.

121 Section 6. To the extent not preempted by federal law or section 6 of chapter 708 of the
122 acts of 1966, a municipality accepting the provisions of this chapter shall require an owner of
123 governmentally involved housing or formerly governmentally involved housing to affirmatively
124 seek out and accept any prospective government housing resources, whether tenant-based or
125 project-based, which maximize affordability of the housing units consistent with the income
126 character of the property and the owner's right to obtain a fair net operating income for the
127 housing units. The appropriate state and municipal agencies shall assist owners by identifying
128 government housing resources.

129 Section 7. To the extent not preempted by federal law or section 6 of chapter 708 of the
130 acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair
131 net operating income and the municipality's housing policy, a municipality accepting the
132 provisions of this chapter shall establish local preferences, priorities, and income limits for
133 admission to governmentally-involved housing or formerly governmentally involved housing
134 upon unit turnover, consistent, to the extent practicable, with the income profile of the property

135 twelve months prior to the date of the loss of rent preemption or the decision to not renew an
136 expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a
137 tenancy involving any person with a history of conduct which would, if repeated, be grounds for
138 eviction from such housing.

139 Section 8. A municipality accepting the provisions of this chapter may adopt such
140 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem
141 necessary or appropriate to effectuate the purposes hereof and may grant exemptions and
142 exceptions thereto when such action would tend to maintain or increase the supply of affordable
143 housing in the municipality, including, without limitation, to promote the sale of the property to a
144 bona-fide tenant organization or non-profit community development corporation under terms and
145 conditions which would tend to maintain the income character of the property.

146 Section 9. Any hearings regarding matters related to regulation of rents or removal
147 permits for governmentally involved housing or formerly governmentally involved housing or
148 regarding compliance with other provisions of this chapter, or any ordinance, by-law, rule, or
149 regulation adopted hereunder, shall be conducted by the municipality or its designee in
150 accordance with the provisions of section 11 of chapter 30A.

151 Section 10. All decisions of the municipality or its designee may be appealed to the
152 housing court if available, the district court or the superior court in the jurisdiction or county
153 where the municipality is located by any person aggrieved thereby, whether or not previously a
154 party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial
155 review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter
156 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter
157 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of
158 this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on
159 application of the municipality or its designee or any aggrieved person may restrain or enjoin
160 violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court
161 may allow any necessary parties to be joined in or to intervene in any action brought hereunder
162 and may in its discretion allow or require an action to proceed as a class action.

163 Section 11. It shall be unlawful for any person to do or omit to do any action in violation
164 of this chapter or any order, ordinance, by-law, rule or regulation adopted or promulgated under
165 this chapter. Whoever willfully violates any provision of this chapter or any order, ordinance, by-
166 law, rule or regulation adopted or promulgated under this chapter or whoever makes a false
167 statement in any testimony before the municipality or its designee, or whoever knowingly
168 supplies the municipality or its designee with false information, in connection with a proceeding
169 under this chapter, shall be punished by a fine of not more than \$400 or by imprisonment for not
170 more than 90 days, or both. In the case of a second or subsequent offense, or where the violation
171 continues after notice thereof, such person shall be punished by a fine of not more than \$2,000,
172 or imprisonment for not more than one year, or both.

173 Section 12. The commonwealth shall not be liable for any claims or other legal action
174 arising from the acceptance of or implementation of this act by any municipality.

175 Section 13. The provisions of M.G.L. Ch 40P shall not apply to any ordinance adopted
176 under this enabling authority.

177 Section 14. The provisions of this act are severable, and if any of its provisions shall be
178 held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of
179 such court shall not affect or impair any of the remaining provisions.