

»»

**House, No. 3812**

**Presented by: Michael F. Rush**

**(with the approval of the mayor and city council) that the city of Boston be authorized to regulate the rents of certain governmentally-involved housing units**

**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

Return to:

Bill inquiry screen,

General Court home page, or

Commonwealth of Massachusetts home page.

HOUSE . . . . . No. 3812

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

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 to restore Boston's governmentally involved housing protection .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael F. Rush	10th Suffolk
Thomas M. Menino	Mayor of Boston
Carlo P. Basile	1st Suffolk
Gloria L. Fox	7th Suffolk
Martin J. Walsh	13th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3950 OF 2007-2008.]

## The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

### AN ACT TO RESTORE BOSTON'S GOVERNMENTALLY INVOLVED HOUSING PROTECTION

*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. Whereas, a serious public emergency exists with respect to the housing of citizens  
2 in Boston residing in governmentally-involved housing, inasmuch as there is a threat that many  
3 low-income individuals and families residing in such housing, particularly those elderly and  
4 disabled, may be threatened with displacement as a result of prepayment of mortgage financing,  
5 loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and there is a  
6 threat that affordable housing stock will be lost due to expiration of use restrictions and subsidy  
7 contracts and such pre-payment, further exacerbating an extreme housing shortage within the  
8 city for low-income families and voters, and whereas, in approving Chapter 40 P of the General  
9 Laws, the voters did not exempt such housing from protection or regulation and whereas it is the  
10 city's policy to encourage owners of this governmentally-involved housing to accept incentives  
11 to keep such housing affordable and avert displacement, that such emergency should be met by  
12 the city of Boston immediately; therefore, this act is declared to be in the public interest.

13 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the contrary,  
14 including, without limitation, the provisions of chapter forty P of the General Laws and chapter  
15 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of Boston  
16 shall determine that the circumstances described in section one hereof continue to exist, the City  
17 of Boston shall by ordinance regulate the rent for the use or occupancy of governmentally-  
18 involved or formerly governmentally-involved housing to the extent such regulation is not  
19 preempted by federal law or by section six of chapter 708 of the Acts of nineteen hundred and  
20 sixty-six as amended, once the basis for federal or state rent regulation or preemption no longer  
21 exists. For purposes of this act, "governmentally-involved housing" is defined as housing units  
22 which the United States, the Commonwealth or any authority created under the laws thereof (i)

23 insures the mortgage thereon, or owns, operates, finances, or subsidizes such housing units, and  
24 (ii) regulates the individual rents thereof, including without limitation housing units constructed  
25 or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12 U.S.C. §  
26 1701q), Sections 221 (d) and 236 of the National Housing Act, as amended (12 U.S.C. § §  
27 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable Housing Act,  
28 as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the Acts of nineteen hundred  
29 and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen hundred and seventy,  
30 as amended (M.G.L. c. 23A App. §1-13A), or housing units financed or subsidized pursuant to  
31 project-based programs for low-income persons under Section 8 of the United States Housing  
32 Act of 1937, as amended (42 U.S.C. § 1437f), or the project-based Massachusetts Rental  
33 Voucher Program, so-called (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of  
34 two thousand, as well as 760 C.M.R. Part 49.00), or housing units with mortgage insurance  
35 under Sections 207 or 220 of the National Housing Act, as amended, and subject to a rent  
36 regulatory agreement or other controls pursuant to applicable law with the Boston  
37 Redevelopment Authority, but not including the following:

- 38 (1) housing units owned or acquired by the City of Boston through tax foreclosure;
- 39 (2) except for publicly owned dwelling units or units which are financed or  
40 subsidized with project-based Section 8, housing units in a one-to-four family building or  
41 structure which are not part of a larger housing development, whether on one or more sites;
- 42 (3) structures containing housing units subsidized with mobile tenant-based rental  
43 assistance that would not otherwise come within the definition of governmentally-involved  
44 housing;
- 45 (4) public housing owned or operated by a local housing authority under chapter 121B  
46 of the General Laws, the United States Housing Act of 1937 (42 U.S.C. § § 1457a et seq.), or  
47 any successor act or public housing programs formerly assisted under the United States  
48 Housing Act of 1937;
- 49 (5) housing units which received mortgage insurance pursuant to sections 207 or 220  
50 of the National Housing Act but not subject to a rent regulatory agreement or other controls  
51 with the Boston Redevelopment Authority as well as housing units which received mortgage  
52 insurance pursuant to section 608 of the National Housing Act, regardless of whether there  
53 was a rent regulatory agreement or other controls with the Boston Redevelopment Authority  
54 or not;
- 55 (6) housing units which received mortgage insurance pursuant to Section 221(d) of the  
56 National Housing Act and which never received a federal or state subsidy or below market  
57 interest rate mortgage subsidy; and
- 58 (7) housing units where the sole government involvement is the owner's participation in  
59 federal, state, or municipal funded programs for home repairs, energy conservation, or lead paint  
60 abatement.

61 For the purpose of this act, "formerly governmentally-involved housing" is defined as housing  
62 which was governmentally-involved housing as of July 1, 1994, or which becomes  
63 governmentally involved housing after July 1, 1994, but which then no longer is owned,  
64 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the  
65 Commonwealth, or any authority created under the laws thereof, provided that "formerly  
66 governmentally involved housing" shall include any housing receiving subsidy under Section  
67 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

68 For the purpose of this act, "low-income" is defined as annual household income which is eighty  
69 per cent or less of the median income for the area as determined by the United States Department  
70 of Housing and Urban Development, with adjustments for smaller and larger families.

71 The City of Boston shall by ordinance create a official body designated by the Mayor to establish  
72 as the maximum rent for the governmentally-involved and formerly governmentally-involved  
73 housing units the rent in effect, therefore on July 1, 1994, or six months before the basis federal  
74 or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent  
75 provides a fair net operating income as of the date of the official's body's decision, provided,  
76 however, said ordinance shall authorize the official body to make individual adjustments in such  
77 maximum rents as may be necessary to remove hardships or to correct other inequities, the  
78 official body shall observe the principle of maintaining maximum rents for such housing units at  
79 levels which will yield to owners a fair net operating income from such housing units. In  
80 determining whether the maximum rent for such housing units yields a fair net operating income,  
81 due consideration shall be given to, among other relevant factors; (1) increases in property taxes;  
82 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement  
83 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)  
84 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)  
85 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to  
86 perform ordinary repair, replacement, or maintenance.

87 (B) Such ordinance shall provide that no person shall bring an action to recover possession  
88 of a governmentally-involved housing unit, or of a formerly governmentally involved housing  
89 unit, to the extent that such regulation is not otherwise preempted by federal law or section six of  
90 chapter 708 of the acts of nineteen hundred and sixty-six as amended, unless:

91 (1) the tenant has failed to pay the rent to which the owner is entitled;

92 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with  
93 Chapter 93A of the General Laws or this act other than the obligation to surrender possession  
94 upon proper notice, and has failed to cure the violation after having received written notice  
95 thereof;

96 (3) the tenant is causing, committing, or permitting a nuisance in, or substantial damage to  
97 the housing unit, or is creating substantial interference with the comfort, safety, or enjoyment of  
98 the owner or other occupants of the same or any adjacent unit;

99 (4) the tenant has used or permitted use of a housing unit for illegal purposes;

100 (5) the tenant, who had a written lease or rental agreement which has terminated, has  
101 refused, after written requests or demand by the owner, to execute a written extension or renewal  
102 thereof for a farther term of like duration on terms not inconsistent with or violative of any  
103 provision of this act;

104 (6) the tenant has refused the owner reasonable access to the housing unit for the purpose  
105 of making necessary repairs or improvements required by law, or for the purpose of inspection as  
106 permitted or required by the lease or law; or for the purpose of showing the housing unit to any  
107 prospective purchaser or mortgagee;

108 (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner;  
109 or

110 (8) the owner seeks to recover possession for any other just cause not in conflict with the  
111 provisions and purposes of this act or chapter 93A of the General Laws.

112 The provisions of this section shall be construed as additional restrictions on the right to recover  
113 possession of such housing units.

114 (C) Such ordinance shall also provide that no person shall remove any governmentally-  
115 involved or formally governmentally-involved housing accommodation from low-income rental  
116 housing use (including but not limited to sale, lease, or other disposition of the property which  
117 may have such an effect), or convert such property to a condominium or cooperative, without  
118 first obtaining a permit for that purpose from the official body, to the extent that such provision  
119 is not preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and  
120 sixty-six as amended. Such permit may be subject to terms and conditions not inconsistent with  
121 the purposes and provisions of this act, including, without limitation, (a) incentives to continue in  
122 effect the low-income restrictions previously in place for the property and (b) where sale, lease,  
123 or disposition of the property may result in the loss of all or a portion of the property for low-  
124 income rental housing use, the right of an incorporated tenants association in such housing, the  
125 city of Boston, the Boston Housing Authority, non-profit community development corporations,  
126 or other equivalent bona fide non-profit organizations to negotiate for, acquire and operate such  
127 property on substantially equivalent terms and conditions as offered or available to a bona fide  
128 third-party purchaser.

129 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of  
130 nineteen hundred and sixty-six as amended, such ordinance shall require that owners of

131 governmentally-involved housing, or formerly governmentally involved housing, affirmatively  
132 seek out and accept any prospective governmental housing resources, whether tenant-based or  
133 project-based, which maximize affordability of the housing units consistent with the income  
134 character of the property and the owner a right to obtain a fair net operating income for the  
135 housing units, provided that the City shall assist owners by identifying such governmental  
136 housing resources.

137 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of  
138 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with the  
139 owner's right to obtain a fair net operating income, such ordinance shall also provide that the  
140 City may establish local preferences, priorities, and income limits for admission to  
141 governmentally-involved housing or former governmentally-involved housing upon unit  
142 turnover, consistent, to the extent with the income profile of the property twelve months prior to  
143 the date of the loss or rent preemption or the decision to not renew an expiring subsidy  
144 contract. The official body may approve an alternative plan requested by the owner, consistent  
145 with the provisions of this Act. No ordinance or regulation shall require an owner to create a  
146 tenancy involving any person with a history of conduct which would, if repeated, be grounds for  
147 eviction from such housing.

148 Such ordinance shall also provide that the official body may grant exemptions and exceptions to  
149 the general provisions of this act when such action would tend to maintain or increase the supply  
150 of affordable housing in Boston, including, without limitation, promoting the sale of properties to  
151 bona fide tenant organizations or non-profit community development corporations under terms  
152 and conditions which would tend to maintain the income character of the property.

153 (F) Such ordinance shall provide that the official body may promulgate such rules,  
154 regulations and orders as it may deem necessary to effectuate the purposes of this act and the  
155 ordinance. The official body may hold hearings on any matters within its authority under this act  
156 and ordinance. Any hearings regarding matters related to regulation of rents or removal permits  
157 for governmentally involved or formerly governmentally involved housing or regarding  
158 compliance with other provisions of this act, or the ordinance, orders, rules, or regulations  
159 adopted or promulgated hereunder, shall be conducted by the official body in accordance with  
160 the provisions of section eleven of chapter thirty A of the General Laws except that requirements  
161 (7) and (8) of such section eleven shall not apply to such hearings.

162 (G) All decisions of the crucial body may be appealed to the housing court department of  
163 the trial court, city of Boston division, by any person aggrieved thereby, whether or not  
164 previously a party in the matter, within thirty calendar days after notice of such  
165 decision. Judicial review of adjudicatory decisions shall be conducted in accordance with  
166 section fourteen of chapter thirty A to the General Laws. Judicial review of regulations shall be  
167 conducted in accordance with section seven of chapter thirty A of the General Laws. The  
168 housing court department of the trial court, city of Boston division, shall have jurisdiction to

169 enforce the provisions hereof and any ordinance, rule or regulation adopted hereunder, and on  
170 application of the official body or any aggrieved person may restrain or enjoin violations of any  
171 such ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary  
172 parties to be joined in or to intervene in any action brought hereunder and may in its discretion  
173 allow or require an action to proceed as a class action.

174 SECTION 3. It shall be unlawful for any person to do or omit to do any action in violation of  
175 this act, or any order, ordinance, rule or regulation adopted or promulgated hereunder. Whoever  
176 willfully violates any provision of this act or any order, ordinance, rule or regulation adopted or  
177 promulgated hereunder or whoever makes a false statement in any testimony before the official  
178 body or its agents, or whoever knowingly supplies the official body with false information shall  
179 be punished by a fine of not more than four hundred dollars or by imprisonment for not more  
180 than ninety days, or both; provided, however, that in the case of a second or subsequent offense,  
181 or where the violation continues after notice thereof, such person shall be punished by a fine of  
182 not more than two thousand dollars, or by imprisonment for not more than one year, or both.

183 SECTION 4. The provisions of this act are severable, and if any of its provisions shall be held  
184 unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such  
185 court shall not affect or impair any of the remaining provisions.

186 SECTION 5. The provisions of M.G.L. c. 40P shall not apply to any ordinance adopted under  
187 this authority.

188 SECTION 6. This act shall take effect upon passage