

SENATE No. 617

The Commonwealth of Massachusetts

PRESENTED BY:

Berry, Frederick (SEN)

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:
Frederick E. Berry	Second Essex
Thomas M. McGee	Third Essex and Middlesex
Harriette L. Chandler	First Worcester
Patricia D. Jehlen	Second Middlesex
James B. Eldridge	Middlesex and Worcester
Robert L. Hedlund	Plymouth and Norfolk
Thomas P. Kennedy	Second Plymouth and Bristol
Mary E. Grant	6th Essex
John D. Keenan	7th Essex
Cynthia Stone Creem	First Middlesex and Norfolk
Scott P. Brown	Norfolk, Bristol and Middlesex

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

18 Section 2. The following words or phrases as used in this chapter shall have the following
19 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 amended
42 (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 involved
66 as of July 1, 1994, or which became governmentally involved housing after July 1, 1994, but
67 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 income for the
69 area as determined by the United States Department of Housing and Urban Development, with
70 adjustments for smaller and larger families.

71 Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary,
72 including, without limitation, the provisions of chapter 282 of the acts of 1994, a municipality
73 accepting the provisions of this chapter shall regulate the rent for use or occupancy of
74 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 shall bring an
83 action to recover possession of a governmentally involved or formerly governmentally involved
84 housing unit to the extent that such regulation is not otherwise preempted by federal law or
85 section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant has failed to pay the rent to
86 which the owner is entitled;(2) the tenant has violated an obligation or covenant of tenancy not
87 inconsistent with chapter 93A or this chapter other than the obligation to surrender possession
88 upon proper notice, and has failed to cure the violation after having received written notice
89 thereof; (3) the tenant is causing, committing or permitting, a nuisance in, or substantial damage
90 to, the housing unit, or is creating substantial interference with the comfort, safety, or enjoyment
91 of the owner or other occupants of the same or any adjacent unit; (4) the tenant has used or
92 permitted use of a housing unit for illegal purposes; (5) the tenant, who had a written lease or
93 rental agreement which has terminated, has refused, after written requests or demand by the
94 owner, to execute a written extension or renewal thereof for a further term of like duration on
95 terms not inconsistent with or violative of any provision of this act; (6) the tenant has refused the

96 owner reasonable access to the housing unit for the purpose of making necessary repairs or
97 improvements required by law, or for the purpose of inspection as permitted or required by the
98 lease or by law, or for the purpose of showing the housing unit to any prospective purchaser or
99 mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not approved by the
100 owner; (8) for tenant-based rental assistance programs only, the owner seeks to recover
101 possession in good faith of a unit for the owner's own use and occupancy or for use and
102 occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents,
103 grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9)
104 the owner seeks to recover possession for any other just cause not in conflict with the provisions
105 and purposes of this chapter or chapter 93A.

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

108 Section 5. In a municipality accepting the provisions of this chapter, no person shall remove any
109 governmentally involved or formerly governmentally involved housing unit from low-income
110 rental housing use, without first obtaining permission for that purpose from the municipality or
111 its designee, to the extent that such provision is not preempted by federal law or section 6 of
112 chapter 708 of the acts of 1966. Such permission may be subject to terms and conditions not
113 inconsistent with the purposes and provisions of this chapter, including, without limitation, (a)
114 incentives to continue in effect the low-income use restrictions previously in place for the
115 property and (b) where sale, lease, or disposition of the property may result in the loss of all or a
116 portion of the property for low-income rental housing use, the right of an incorporated tenant
117 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 acts of
122 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 acts of
130 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair net
131 operating income and the municipality's housing policy, a municipality accepting the provisions
132 of this chapter shall establish local preferences, priorities, and income limits for admission to
133 governmentally-involved housing or formerly governmentally involved housing upon unit
134 turnover, consistent, to the extent practicable, with the income profile of the property twelve
135 months prior to the date of the loss of rent preemption or the decision to not renew an expiring
136 subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a tenancy

137 involving any person with a history of conduct which would, if repeated, be grounds for eviction
138 from such housing.

139 Section 8. A municipality accepting the provisions of this chapter may adopt such ordinances or
140 by-laws and promulgate such rules, regulations, and orders as it may deem necessary or
141 appropriate to effectuate the purposes hereof and may grant exemptions and exceptions thereto
142 when such action would tend to maintain or increase the supply of affordable housing in the
143 municipality, including, without limitation, to promote the sale of the property to a bona-fide
144 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 permits for
147 governmentally involved housing or formerly governmentally involved housing or regarding
148 compliance with other provisions of this chapter, or any ordinance, by-law, rule, or regulation
149 adopted hereunder, shall be conducted by the municipality or its designee in accordance with the
150 provisions of section 11 of chapter 30A.

151 Section 10. All decisions of the municipality or its designee may be appealed to the housing
152 court if available, the district court or the superior court in the jurisdiction or county where the
153 municipality is located by any person aggrieved thereby, whether or not previously a party in the
154 matter, within 30 calendar days after receipt of notice of such decision. Judicial review of
155 adjudicatory decisions shall be conducted in accordance with section 14 of chapter 30A. Judicial
156 review of regulations shall be conducted in accordance with section 7 of chapter 30A. The
157 housing, district and superior courts shall have jurisdiction to enforce the provisions of this
158 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 of this
164 chapter or any order, ordinance, by-law, rule or regulation adopted or promulgated under this
165 chapter. Whoever willfully violates any provision of this chapter or any order, ordinance, by-law,
166 rule or regulation adopted or promulgated under this chapter or whoever makes a false statement
167 in any testimony before the municipality or its designee, or whoever knowingly supplies the
168 municipality or its designee with false information, in connection with a proceeding under this
169 chapter, shall be punished by a fine of not more than \$400 or by imprisonment for not more than
170 90 days, or both. In the case of a second or subsequent offense, or where the violation continues
171 after notice thereof, such person shall be punished by a fine of not more than \$2,000, or
172 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 arising
174 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 under this
176 enabling authority.

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