

**SENATE . . . . . No. 618**

**[LOCAL APPROVAL RECEIVED.]**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Frederick E. Berry**

*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 adopt protections for Salem's governmentally involved housing stock.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frederick E. Berry	Second Essex
John D. Keenan	7th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S02152 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT TO ADOPT PROTECTIONS FOR SALEM'S GOVERNMENTALLY INVOLVED HOUSING STOCK.

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

14           SECTION 2.   (A) Notwithstanding the provisions of any general or special law to the contrary,  
15 including, without limitation, the provisions of chapter forty P of the General Laws and chapter  
16 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of Salem

17 shall determine that the circumstances described in section one hereof continue to exist, the City  
18 of Salem shall by ordinance regulate the rent for use or occupancy of governmentally involved or  
19 formerly governmentally involved housing to the extent such regulation is not preempted by  
20 federal law or by section six of chapter 708 of the Acts of nineteen hundred and sixty-six as  
21 amended, once the basis for federal or state rent regulation or preemption no longer exists. For  
22 purposes of this act, “governmentally involved housing” is defined as housing units which the  
23 United States, the Commonwealth or any authority created under the laws thereof (i) insures the  
24 mortgage thereon, or owns, operates, finances, or subsidizes such housing units,

25 and (ii) regulates the individual rents thereof, including without limitation housing units  
26 constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended (12  
27 U.S.C. §1701q), Section 221(d) and Section 236 of the National Housing Act, as amended (12  
28 U.S.C. §§1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable  
29 Housing Act, as amended (42 U.S.C. §8013) or Section 13A of chapter 708 of the Acts of  
30 nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen  
31 hundred and seventy, as amended (M.G.L. c. 23A App. §1-13A), or housing units financed or  
32 subsidized pursuant to project-based programs for low-income persons under Section 8 of the  
33 United States Housing Act of 1937, as amended (42 U.S.C. § 1437f) or the project-based  
34 Massachusetts Rental Voucher Program, so-called (see line Item 7004-9004 of Section 2 of  
35 chapter 159 of the Acts of two thousand, as well as 760 C.M.R, Part 49.00), but not including the  
36 following;

37 (1) housing units owned or acquired by the City of Salem through tax foreclosure;

38 (2) housing units in a building or structure of fewer than one hundred units which are not part of  
39 a larger housing development, whether on one or more sites:

40 (3) structures containing housing units subsidized with mobile tenant-based rental assistance that  
41 would not otherwise come within the definition of governmentally involved housing;

42 (4) public housing owned or operated by the Salem Housing Authority under chapter 121Bf of  
43 the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a *et seq.*), or any

44 successor act or public housing programs formerly assisted under the United States Housing Act  
45 of 1937;

46 (5) housing units where the sole government involvement is the owners participation in federal,  
47 state, or municipal funded programs for home repairs, energy conservation, or lead paint  
48 abatement.

49 (6) housing units which become governmentally involved after January 1, 2009

50 For the purpose of this act, "formerly governmentally involved housing" is defined as housing  
51 which was governmentally involved housing as of July 1, 1996, or which becomes  
52 governmentally involved housing after July 1, 1996, but which then no longer is owned,  
53 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the  
54 Commonwealth, or any authority created under the laws thereof, provided that "formerly  
55 governmentally involved housing" shall include any housing receiving subsidy under Section  
56 8(t) of the United States Housing Act of 1937 (42 U.S.C. §1437f(t)).

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

60 The City of Salem shall by ordinance create an official body to establish as the maximum rent  
61 for the governmentally involved and formally governmentally involved housing units the rent in  
62 effect therefore on July 1, 1996, or six months before the basis for federal or state rent regulation  
63 or preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net  
64 operating income as of the date of the official body's decision, provided, however, said  
65 ordinance shall authorize the official body to make individual adjustments in such maximum  
66 rents as may be necessary to remove hardships or to correct other inequities. In making  
67 individual adjustments to remove hardships or to correct other inequities, the official body shall  
68 observe the principle of maintaining maximum rents for such housing units at levels that will  
69 yield to owners a fair net operating income from such housing units. In determining whether the  
70 maximum rent for such housing units yields a fair net operating income, due consideration shall  
71 be given to, among other relevant factors: (1) increases in property taxes; (2) unavoidable

72 increases in operating and maintenance expenses; (3) major capital improvement of the housing  
73 units, distinguished from ordinary repair, replacement, and maintenance, (4) increases or  
74 decreases in living space, services, furniture, furnishings or equipment; and (5) substantial  
75 deterioration of the housing units, other than ordinary wear and tear, or failure to perform  
76 ordinary repair, replacement, or maintenance.

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

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

82 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter  
83 93A of the General Laws or this act other than the obligation to surrender possession upon  
84 proper notice, and has failed to cure the violation after having received written notice thereof;

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

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

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

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

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

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

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

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

116 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of  
117 nineteen hundred and sixty-six as amended, such ordinance shall require that owners of  
118 governmentally involved housing, or formerly governmentally involved housing, affirmatively  
119 seek out and accept any prospective governmental housing resources, whether tenant-based or  
120 project-based, which maximize affordability of the housing units consistent with the income  
121 character of the property and the owner's right to obtain a fair net operating income for the  
122 housing units., provided that the city shall assist owners by identifying such governmental  
123 housing resources.

124 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts of  
125 nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with the

126 owners right to obtain a fair net operating income, such ordinance shall also provide that the city  
127 may establish local preferences, priorities, and income limits for admission to governmentally  
128 involved housing or formally governmentally involved housing upon unit turnover, consistent, to  
129 the extent practicable, with the income profile of the property twelve months prior to the date of  
130 the loss of rent preemption or the decision to not renew an expiring subsidy contract. The official  
131 body may approve an alternate plan requested by the owner, consistent with the provision of this  
132 Act. No ordinance or regulation shall require an owner to create a tenancy involving any person  
133 with a history of conduct which would, if repeated, be grounds for eviction from such housing.

134 (F) Such ordinance shall also provide that the official body may grant exemptions and exceptions  
135 to the general provisions of this act when such action would tend to maintain or increase the  
136 supply of affordable housing in Salem, including, without limitation, promoting the sale of  
137 properties to bone fide tenant organizations or non-profit community development corporations  
138 under terms and conditions which would tend to maintain the income character of the property.

139 (G) Such ordinance shall provide that the official body may promulgate such rules, regulations  
140 and orders as it may deem necessary to effectuate the purposes of this act and the ordinance. The  
141 board may hold hearings on any matters within its authority under this act and ordinance. Any  
142 hearings regarding matters related to regulation of rents or removal permits for governmentally  
143 involved or formerly governmentally involved housing or regarding compliance with other  
144 provisions of this act, or the ordinance, orders, rules, or regulations adopted or promulgated  
145 hereunder, shall be conducted by the official body in accordance with the provisions of reaction  
146 eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of such  
147 section eleven shall not apply to such hearings.

148 (H) All decisions of the official body may be appealed to the housing court department of the  
149 trial court, Northeast Division, by any person aggrieved thereby, whether or not previously a  
150 party in the matter, within thirty calendar days after notice of such decision. Judicial review of ad  
151 judicatory decisions shall be conducted in accordance with section fourteen of chapter thirty A of  
152 the General Laws. Judicial review of regulations shall be conducted in accordance with section  
153 seven of chapter thirty A of the General Laws. The housing court department of the trial court,  
154 Northeast Division shall have jurisdiction to enforce the provision hereof and any ordinance, rule

155 or regulation adopted hereunder, and on application of the board or any aggrieved person may  
156 restrain or enjoin violations of any such ordinance, rule, or regulation. In the interests of justice,  
157 the court may allow any necessary parties to be joined in or to intervene in any action brought  
158 hereunder and may in its discretion allow or require an action to proceed as a class action.

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

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

171 SECTION 5. involved The provisions of M.G.L. c. 40P shall not apply to any ordinance  
172 adopted under this enabling authority.

173 SECTION 6. This act shall take effect upon its passage.