

HOUSE No. 1138

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 adoption 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:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>

<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Michael J. Moran</i>	<i>18th Suffolk</i>

HOUSE No. 1138

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 1138) of Frank I. Smizik and others for legislation to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1156 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 40W the
2 following chapter:

3 CHAPTER 40X.

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

6 Section 1. The general court finds and declares that: (a) a serious public
7 emergency continues to exist with respect to the housing of a substantial number of persons in
8 certain areas of the commonwealth residing in governmentally involved housing, inasmuch that
9 many low-income individuals and families residing in such housing, particularly those elderly

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

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

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

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

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

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

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

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

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

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

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

40 (9) chapter 121A of the General Laws to the extent the chapter 121A approvals
41 restrict the affordability of the project’s dwelling units;

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

43 (11) section 811 of the Cranston-Gonzalez National Affordable Housing Act,
44 as amended (42 U.S.C. section8013);

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

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

49 (14) the project-based Massachusetts Rental Voucher Program, so-called (see
50 line item 7004-9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part
51 49.00)

52 For purposes of this section, “governmentally involved housing” shall not
53 include the following: (1) housing units owned or acquired by the municipality through tax
54 foreclosure; (2) housing units in a one to ten family building or structure that is not part of a
55 larger housing development, whether on one or more sites; (3) structures containing housing
56 units subsidized with mobile tenant-based rental assistance that would not otherwise come within
57 the definition of governmentally involved housing; (4) structures containing housing units which
58 were subject to chapter 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the
59 acts of 1970, chapter 843 of the acts of 1970, chapter 843 of the acts of 1971, chapter 45 of the
60 acts of 1987, chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which would
61 otherwise not come within the definition of governmentally involved housing; (5) public housing
62 owned or operated by a local housing authority under chapter 121B, the United States Housing
63 Act of 1937, or any successor act or public housing programs formerly assisted under the United
64 States Housing Act of 1937; (6) housing units which first became governmentally involved after
65 October 1, 2010, unless the municipality enacts a different date; and (7) housing units where the
66 sole government involvement is the owner's participation in federal, state, or municipal funded
67 programs for home repairs, energy conservation, or lead paint abatement.

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

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

74 Section 3. (A) In a municipality accepting the provisions of this chapter, no
75 person shall bring an action to recover possession of a governmentally involved or formerly
76 governmentally involved housing unit to the extent that such regulation is not otherwise
77 preempted by federal law or section 6 of chapter 708 of the acts of 1966, unless: (1) the tenant
78 has failed to pay the rent to which the owner is entitled; (2) the tenant has violated an obligation
79 or covenant of tenancy not inconsistent with chapter 93A or this chapter other than the obligation
80 to surrender possession upon proper notice, and has failed to cure the violation after having
81 received written notice thereof; (3) the tenant is causing, committing or permitting, a nuisance in,
82 or substantial damage to, the housing unit, or is creating substantial interference with the
83 comfort, safety, or enjoyment of the owner or other occupants of the same or any adjacent unit;
84 (4) the tenant has used or permitted use of a housing unit for illegal purposes; (5) the tenant, who
85 had a written lease or rental agreement which has terminated, has refused, after written requests
86 or demand by the owner, to execute a written extension or renewal thereof for a further term of
87 like duration on terms not inconsistent with or violative of any provision of this act; (6) the
88 tenant has refused the owner reasonable access to the housing unit for the purpose of making
89 necessary repairs or improvements required by law, or for the purpose of inspection as permitted
90 or required by the lease or by law, or for the purpose of showing the housing unit to any
91 prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a
92 subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the
93 owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy
94 or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren,
95 parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-

96 law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the
97 provisions and purposes of this chapter or chapter 93A.

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

100 Section 4. In a municipality accepting the provisions of this chapter, no person
101 shall remove any governmentally involved or formerly governmentally involved housing unit
102 from low-income rental housing use, without first obtaining permission for that purpose from the
103 municipality or its designee, to the extent that such provision is not preempted by federal law or
104 section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and
105 conditions not inconsistent with the purposes and provisions of this chapter, including, without
106 limitation, incentives to continue in effect the low-income use restrictions previously in place for
107 the property.

108 Section 5. To the extent not preempted by federal law or section 6 of chapter 708
109 of the acts of 1966, a municipality accepting the provisions of this chapter shall require an owner
110 of governmentally involved housing or formerly governmentally involved housing to
111 affirmatively seek out and accept any prospective government housing resources, whether
112 tenant-based or project-based, and to convert tenant-based to project-based assistance, in order to
113 maximize the long term affordability of housing units for low income households consistent
114 with the income character of the property and the owner's right to obtain a fair net operating
115 income for the housing units. The appropriate state and municipal agencies shall assist owners by
116 identifying government housing resources.

117 Section 6. To the extent not preempted by federal law or section 6 of chapter 708
118 of the acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a
119 fair net operating income and the municipality's housing policy, a municipality accepting the
120 provisions of this chapter shall establish local preferences, priorities, and income limits for
121 admission to governmentally-involved housing or formerly governmentally involved housing
122 upon unit turnover, consistent, to the extent practicable, with the income profile of the property
123 twelve months prior to the date of the loss of rent preemption or the decision to not renew an
124 expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a
125 tenancy involving any person with a history of conduct which would, if repeated, be grounds for
126 eviction from such housing.

127 Section 7. A municipality accepting the provisions of this chapter may adopt such
128 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem
129 necessary or appropriate to effectuate the purposes hereof and may grant exemptions and
130 exceptions thereto when such action would tend to maintain or increase the supply of affordable
131 housing in the municipality, including, without limitation, to promote the sale of the property to a
132 bona-fide tenant organization or non-profit community development corporation under terms and
133 conditions which would tend to maintain the income character of the property and its long term
134 affordability for low income people.

135 Section 8. Any hearings regarding matters related to regulation of rents or
136 removal permits for governmentally involved housing or formerly governmentally involved
137 housing or regarding compliance with other provisions of this chapter, or any ordinance, by-law,
138 rule, or regulation adopted hereunder, shall be conducted by the municipality or its designee in
139 accordance with the provisions of section 11 of chapter 30A.

140 Section 9. All decisions of the municipality or its designee may be appealed to
141 the housing court if available, the district court or the superior court in the jurisdiction or county
142 where the municipality is located by any person aggrieved thereby, whether or not previously a
143 party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial
144 review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter
145 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter
146 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of
147 this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on
148 application of the municipality or its designee or any aggrieved person may restrain or enjoin
149 violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court
150 may allow any necessary parties to be joined in or to intervene in any action brought hereunder
151 and may in its discretion allow or require an action to proceed as a class action.

152 Section 10. It shall be unlawful for any person to do or omit to do any action in
153 violation of this chapter or any order, ordinance, by-law, rule or regulation adopted or
154 promulgated under this chapter. Whoever willfully violates any provision of this chapter or any
155 order, ordinance, by-law, rule or regulation adopted or promulgated under this chapter or
156 whoever makes a false statement in any testimony before the municipality or its designee, or
157 whoever knowingly supplies the municipality or its designee with false information, in
158 connection with a proceeding under this chapter, shall be punished by a fine of not more than
159 \$400 or by imprisonment for not more than 90 days, or both. In the case of a second or
160 subsequent offense, or where the violation continues after notice thereof, such person shall be
161 punished by a fine of not more than \$2,000, or imprisonment for not more than one year, or both.

162 Section 11. The commonwealth shall not be liable for any claims or other legal
163 action arising from the acceptance of or implementation of this act by any municipality.

164 Section 12. The provisions of M.G.L. Ch 40P shall not apply to any ordinance
165 adopted under this enabling authority.

166 Section 13. The provisions of this act are severable, and if any of its provisions
167 shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the
168 decision of such court shall not affect or impair any of the remaining provisions.