

HOUSE No. 03428

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 New Bedford's governmentally involved housing stock.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>

HOUSE No. 03428

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. [BILL NUMBER]) of Antonio F. D. Cabral, Stephen R. Canessa and Robert M. Koczera (with the approval of the mayor and city council) for legislation to authorize the city of New Bedford to adopt regulations for the protection and control of public housing in said city. Housing. [Local Approval Received.]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3810 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to adopt protections for New Bedford'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.

2 Whereas, a serious public emergency exists with respect to the housing of citizens in New
3 Bedford residing in governmentally-involved housing, in as much as there is a threat that many
4 low-income individuals and families residing in such housing, particularly those elderly and
5 disabled, may be threatened with displacement as a result of prepayment of mortgage financing,
6 loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and there is a
7 threat that affordable housing stock will be lost due to expiration of use restrictions and subsidy

8 contracts and such pre-payment, further exacerbating an extreme housing shortage within the
9 city for low-income families and voters, and whereas, in approving Chapter 40 P of the General
10 Laws, the voters did not exempt such housing from protection or regulation and whereas it is the
11 city's policy to encourage owners of this governmentally-involved housing to accept incentives
12 to keep such housing affordable and avert displacement, that such emergency should be met by
13 the city of New Bedford immediately; therefore, this 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 New
17 Bedford shall determine that the circumstances described in section one hereof continue to exist,
18 the City of New Bedford shall by ordinance regulate the rent for use or occupancy of
19 governmentally-involved or formerly governmentally-involved housing to the extent such
20 regulation is not preempted by federal law or by section six of chapter 708 of the Acts of
21 nineteen hundred and sixty-six as amended, once the basis for federal or state rent regulation or
22 preemption no longer exists, except that market units in projects formerly assisted under sections
23 25 through 27 of chapter 23 (a) of the General Laws shall not be deemed to be regulated by the
24 state for purposes of this act. For purposes of this act, "governmentally-involved housing" is
25 defined as housing units which the United States, the Commonwealth or any authority created
26 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes
27 such housing units, and (ii) regulates the individual rents thereof, including without limitation
28 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as
29 amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as amended
30 (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable

31 Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the Acts of
32 nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of nineteen
33 hundred and seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units financed or
34 subsidized pursuant to project-based programs for low-income persons under Section 8 of the
35 United States Housing Act of 1937, as amended (42 U.S.C. § 1437f) or the project-based
36 Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of Section 2 of
37 chapter 159 of the Acts of two thousand, as well as 760 C.M.R. Part 49.00), but not including the
38 following:-

39 (1) housing units owned or acquired by the City of New Bedford through tax foreclosure;

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41 (2) housing units in a building or structure of fewer than twenty-five units which are not part of a
42 larger housing development, whether on one or more sites;

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

45 (4) public housing owned or operated by the New Bedford Housing Authority under chapter
46 121Bf of the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a et seq.),
47 or any successor act or public housing programs formerly assisted under the United States
48 Housing Act of 1937;

49 (5) housing units where the sole government involvement is the owner's participation in federal,
50 state, or municipal funded programs for home repairs, energy conservation, or lead paint
51 abatement.

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

53 For the purpose of this act, "formerly governmentally-involved housing" is defined as
54 housing which was governmentally-involved housing as of July 1, 1996 or which becomes
55 governmentally-involved housing after July 1, 1996 but which then no longer is owned,
56 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the
57 Commonwealth, or any authority created under the laws thereof, provided that "formerly
58 governmentally involved housing" shall include any housing receiving subsidy under Section
59 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

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

63 The City of New Bedford shall by ordinance create an official body to establish as the
64 maximum rent for the governmentally-involved and formerly governmentally-involved housing
65 units the rent in effect therefore on July 1, 1996 or six months before the basis for federal or state
66 rent regulation or preemption lapsed, whichever is later, adjusted to insure such rent provides a
67 fair net operating income as of the date of the official body's decision, provided, however, said
68 ordinance shall authorize the official body to make individual adjustments in such maximum
69 rents as may be necessary to remove hardships or to correct other inequities.

70 In making individual adjustments to remove hardships or to correct other inequities, the official
71 body shall observe the principle of maintaining maximum rents for such housing units at levels
72 which will yield to owners a fair net operating income from such housing units. In determining
73 whether the maximum rent for such housing units yields a fair net operating income, due

74 consideration shall be given to, among other relevant factors: (1) increases in property taxes; (2)
75 unavoidable increases in operating and maintenance expenses; (3) major capital improvement of
76 the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)
77 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
78 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to
79 perform ordinary repair, replacement, or maintenance.

80 (B) Such ordinance shall provide that no person shall bring an action to recover possession of a
81 governmentally-involved housing unit, or of a formerly governmentally involved housing unit, to
82 the extent that such regulation is not otherwise preempted by federal law or section six of chapter
83 708 of the acts of nineteen hundred and sixty-six as amended, unless:

84

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

86 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter
87 93A of the General Laws or this act other than the obligation to surrender possession upon
88 proper notice, and has failed to cure the violation after having received written notice thereof;

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

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

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

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

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

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

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

107 (C) Such ordinance shall also provide that no person shall remove any governmentally-involved
108 or formerly governmentally-involved housing accommodation from low-income rental housing
109 use (including but not limited to sale, lease, or other disposition of the property which may have
110 such an effect), or convert such property to a condominium or cooperative, without first
111 obtaining a permit for that purpose from the official body, to the extent that such provision is not
112 preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and sixty-
113 six as amended. Such permit may be subject to terms and conditions not inconsistent with the
114 purposes and provisions of this act, including, without limitation, (a) incentives to continue in
115 effect the low-income restrictions previously in place for the property and (b) where sale, lease,

116 or disposition of the property may result in the loss of all or a portion of the property for low-
117 income rental housing use, the right of an incorporated tenants association in such housing, the
118 city of New Bedford, the New Bedford Housing Authority, or non-profit community
119 development corporations to negotiate for, acquire and operate such property on substantially
120 equivalent terms and conditions as offered or available to a bona fide third-party purchaser.

121 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts of
122 nineteen hundred and sixty-six as amended, such ordinance shall require that owners of
123 governmentally-involved housing, or formerly governmentally involved housing, affirmatively
124 seek out and accept any prospective governmental 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, provided that the City shall assist owners by identifying such governmental
128 housing resources.

129 (E) 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, and so long as such regulation is consistent with the
131 owner's right to obtain a fair net operating income, such ordinance shall also provide that the
132 City may 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. The official body may approve an alternate plan requested by the owner,
137 consistent with the provisions of this act. No ordinance or regulation shall require an owner to

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

140 (F) Such ordinance shall also provide that the official body may grant exemptions and
141 exceptions to the general provisions of this act when such action would tend to maintain or
142 increase the supply of affordable housing in New Bedford, including, without limitation,
143 promoting the sale of properties to bona fide tenant organizations or non-profit community
144 development corporations under terms and conditions which would tend to maintain the income
145 character of the property.

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

155 (H) All decisions of the official body may be appealed to the housing court department of the
156 trial court, Southeast Division, by any person aggrieved thereby, whether or not previously a
157 party in the matter, within thirty calendar days after notice of such decision. Judicial review of
158 adjudicatory decisions shall be conducted in accordance with section fourteen of chapter thirty A
159 of the General Laws. Judicial review of regulations shall be conducted in accordance with

160 section seven of chapter thirty A of the General Laws. The housing court department of the trial
161 court, Southeast Division, shall have jurisdiction to enforce the provisions hereof and any
162 ordinance, rule or regulation adopted hereunder, and on application of the board or any aggrieved
163 person may restrain or enjoin violations of any such ordinance, rule, or regulation. In the
164 interests of justice, the court may allow any necessary parties to be joined in or to intervene in
165 any action brought hereunder and may in its discretion allow or require an action to proceed as a
166 class action.

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

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

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

181 SECTION 6. This act shall take effect upon passage.