

SENATE No. 00581

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 authorizing municipalities to protect low and moderate income tenants and units of governmentally involved housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Frederick E. Berry</i>	<i>Second Essex</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Michael F. Rush</i>	<i>Suffolk and Norfolk</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

SENATE No. 00581

By Mr. Berry, petition (accompanied by bill, Senate, No. 581) of Spiliotis, Story, Keenan and other members of the General Court for legislation to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing [Joint Committee on Housing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 617 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 court finds and declares that: (a) a serious public emergency
2 continues to exist with respect to the housing of a substantial number of persons in certain areas
3 of the commonwealth residing in governmentally involved housing, inasmuch that many low-
4 income individuals and families residing in such housing, particularly those elderly and disabled,
5 may be threatened with displacement as a result of prepayment of mortgage financing, loss of
6 use or rent 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 or rent restrictions and
8 such pre-payment, further exacerbating an extreme housing shortage for low-income families

9 and individuals; (b) it is the commonwealth's policy to encourage owners of this governmentally
10 involved housing to accept incentives to keep such housing affordable and avert displacement;
11 (c) such emergency should be met by the commonwealth immediately and with due regard for
12 the rights and responsibilities of its local communities; therefore, this chapter is declared to be in
13 the public interest.

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

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

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

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

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

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

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

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

28 (7) the Urban Development Action Grant, hereinafter referred to as UDAG,
29 42 U.S.C. section 5318, or the Housing Development Action Grant, hereinafter referred to as
30 HoDAG, 42 U.S.C. section 1437o, in either case to the extent the project's rents are restricted or
31 regulated pursuant to a grant agreement with the U.S. Department of Housing and Urban
32 Development or otherwise;

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

35 (9) chapter 121A of the General Laws to the extent the chapter 121A
36 approvals restrict the affordability of the project's dwelling units;

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

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

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

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

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

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

64 (B) "Formerly governmentally involved housing", housing which was governmentally
65 involved as of July 1, 1994, or which became governmentally involved housing after July 1,
66 1994, but which is no longer governmentally-involved as defined in this section.

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

70 Section 3. (a) Notwithstanding the provisions of any general or special law to the
71 contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a
72 municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy
73 of governmentally involved or formerly governmentally involved housing to the extent such
74 regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966,
75 once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer
76 exists.(b) Said municipality shall establish as the maximum rent for governmentally involved and
77 formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six
78 months before the basis for federal or Massachusetts Housing Finance Agency rent preemption
79 lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of
80 the date of the loss of preemption.

81 Section 4. (a) In a municipality accepting the provisions of this chapter, no person shall
82 bring an action to recover possession of a governmentally involved or formerly governmentally
83 involved housing unit to the extent that such regulation is not otherwise preempted by federal
84 law or section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant has failed to pay the rent
85 to which the owner is entitled;(2) the tenant has violated an obligation or covenant of tenancy not
86 inconsistent with chapter 93A or this chapter other than the obligation to surrender possession
87 upon proper notice, and has failed to cure the violation after having received written notice
88 thereof; (3) the tenant is causing, committing or permitting, a nuisance in, or substantial damage
89 to, the housing unit, or is creating substantial interference with the comfort, safety, or enjoyment
90 of the owner or other occupants of the same or any adjacent unit; (4) the tenant has used or
91 permitted use of a housing unit for illegal purposes; (5) the tenant, who had a written lease or
92 rental agreement which has terminated, has refused, after written requests or demand by the

93 owner, to execute a written extension or renewal thereof for a further term of like duration on
94 terms not inconsistent with or violative of any provision of this act; (6) the tenant has refused the
95 owner reasonable access to the housing unit for the purpose of making necessary repairs or
96 improvements required by law, or for the purpose of inspection as permitted or required by the
97 lease or by law, or for the purpose of showing the housing unit to any prospective purchaser or
98 mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not approved by the
99 owner; (8) for tenant-based rental assistance programs only, the owner seeks to recover
100 possession in good faith of a unit for the owner's own use and occupancy or for use and
101 occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents,
102 grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9)
103 the owner seeks to recover possession for any other just cause not in conflict with the provisions
104 and purposes of this chapter or chapter 93A.

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

107 Section 5. In a municipality accepting the provisions of this chapter, no person shall
108 remove any governmentally involved or formerly governmentally involved housing unit from
109 low-income rental housing use, without first obtaining permission for that purpose from the
110 municipality or its designee, to the extent that such provision is not preempted by federal law or
111 section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and
112 conditions not inconsistent with the purposes and provisions of this chapter, including, without
113 limitation, (a) incentives to continue in effect the low-income use restrictions previously in place
114 for the property and (b) where sale, lease, or disposition of the property may result in the loss of
115 all or a portion of the property for low-income rental housing use, the right of an incorporated

116 tenant association in such housing, the municipality, the local housing authority, or non-profit
117 community development corporations to negotiate for, acquire and operate such property on
118 substantially equivalent terms and conditions as offered or available to a bona-fide third-party
119 purchaser.

120 Section 6. To the extent not preempted by federal law or section 6 of chapter 708 of the
121 acts of 1966, a municipality accepting the provisions of this chapter shall require an owner of
122 governmentally involved housing or formerly governmentally involved housing to affirmatively
123 seek out and accept any prospective government housing resources, whether tenant-based or
124 project-based, which maximize affordability of the housing units consistent with the income
125 character of the property and the owner's right to obtain a fair net operating income for the
126 housing units. The appropriate state and municipal agencies shall assist owners by identifying
127 government housing resources.

128 Section 7. To the extent not preempted by federal law or section 6 of chapter 708 of the
129 acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair
130 net operating income and the municipality's housing policy, a municipality accepting the
131 provisions of this chapter shall establish local preferences, priorities, and income limits for
132 admission to governmentally-involved housing or formerly governmentally involved housing
133 upon unit turnover, consistent, to the extent practicable, with the income profile of the property
134 twelve months prior to the date of the loss of rent preemption or the decision to not renew an
135 expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a
136 tenancy involving any person with a history of conduct which would, if repeated, be grounds for
137 eviction from such housing.

138 Section 8. A municipality accepting the provisions of this chapter may adopt such
139 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem
140 necessary or appropriate to effectuate the purposes hereof and may grant exemptions and
141 exceptions thereto when such action would tend to maintain or increase the supply of affordable
142 housing in the municipality, including, without limitation, to promote the sale of the property to a
143 bona-fide tenant organization or non-profit community development corporation under terms and
144 conditions which would tend to maintain the income character of the property.

145 Section 9. Any hearings regarding matters related to regulation of rents or removal
146 permits for governmentally involved housing or formerly governmentally involved housing or
147 regarding compliance with other provisions of this chapter, or any ordinance, by-law, rule, or
148 regulation adopted hereunder, shall be conducted by the municipality or its designee in
149 accordance with the provisions of section 11 of chapter 30A.

150 Section 10. All decisions of the municipality or its designee may be appealed to the
151 housing court if available, the district court or the superior court in the jurisdiction or county
152 where the municipality is located by any person aggrieved thereby, whether or not previously a
153 party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial
154 review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter
155 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter
156 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of
157 this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on
158 application of the municipality or its designee or any aggrieved person may restrain or enjoin
159 violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court

160 may allow any necessary parties to be joined in or to intervene in any action brought hereunder
161 and may in its discretion allow or require an action to proceed as a class action.

162 Section 11. It shall be unlawful for any person to do or omit to do any action in
163 violation of this chapter or any order, ordinance, by-law, rule or regulation adopted or
164 promulgated under this chapter. Whoever willfully violates any provision of this chapter or any
165 order, ordinance, by-law, rule or regulation adopted or promulgated under this chapter or
166 whoever makes a false statement in any testimony before the municipality or its designee, or
167 whoever knowingly supplies the municipality or its designee with false information, in
168 connection with a proceeding under this chapter, shall be punished by a fine of not more than
169 \$400 or by imprisonment for not more than 90 days, or both. In the case of a second or
170 subsequent offense, or where the violation continues after notice thereof, such person shall be
171 punished by a fine of not more than \$2,000, or imprisonment for not more than one year, or both.

172 Section 12. The commonwealth shall not be liable for any claims or other legal action
173 arising from the acceptance of or implementation of this act by any municipality.

174 Section 13. The provisions of M.G.L. Ch 40P shall not apply to any ordinance adopted
175 under this enabling authority.

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