

**SENATE . . . . . No. 580**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Frederick E. Berry***

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

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Frederick E. Berry*

**SENATE . . . . . No. 580**

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By Mr. Berry, petition (accompanied by bill, Senate, No. 580) of Berry for legislation to adopt protections for Salem's governmently involved housing stock [Local Approval Received] [Joint Committee on Housing].

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 618 OF 2009-2010.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

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

12 should be met by the city of Salem immediately; therefore, this act is declared to be in the public  
13 interest.

14 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the  
15 contrary, including, without limitation, the provisions of Chapter Forty P of the General Laws  
16 and Chapter 282 of the Acts of Nineteen Hundred and Ninety-four, for so long as the City  
17 Council of Salem shall determine that the circumstances described in section one hereof continue  
18 to exist, the City of Salem 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. For purposes of this act, “governmentally-involved housing” is  
23 defined as housing units which the United States, the Commonwealth or any authority created  
24 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes  
25 such housing units, and (ii) regulates the individual rents thereof, including without limitation  
26 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959,  
27 as amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as  
28 amended (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National  
29 Affordable Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of Chapter 708 of the  
30 Acts of Nineteen Hundred and Sixty-six, added by Section 10 of Chapter 855 of the Acts of  
31 Nineteen Hundred and Seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units  
32 financed or subsidized pursuant to project-based programs for low-income persons under Section  
33 8 of the 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  
36 the 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  
39 part of a larger housing development, whether on one or more sites;

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

43 (4) public housing owned or operated by the Salem Housing Authority under Chapter  
44 121Bf of the General Laws, the United States Housing Act of 1937 (42 U.S.C. §§ 1437a et seq.),  
45 or any successor act or public housing programs formerly assisted under the United States  
46 Housing Act of 1937;

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

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

51 For the purpose of this act, "formerly governmentally-involved housing" is defined as  
52 housing which was governmentally-involved housing as of July 1, 1996, or which becomes  
53 governmentally-involved housing after July 1, 1996, but which then no longer is owned,  
54 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the  
55 Commonwealth, or any authority created under the laws thereof, provided that "formerly

56 governmentally involved housing” shall include any housing receiving subsidy under Section  
57 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

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

62 The City of Salem shall by ordinance create an official body to establish as the maximum  
63 rent for the governmentally-involved and formerly governmentally-involved housing units the  
64 rent in effect therefor on July 1, 1996 or six months before the basis for federal or state rent  
65 regulation or preemption lapsed, whichever is later, adjusted to insure such rent provides a fair  
66 net operating income as of the date of the official body’s decision, provided, however, said  
67 ordinance shall authorize the official body to make individual adjustments in such maximum  
68 rents as may be necessary to remove hardships or to correct other inequities. In making  
69 individual adjustments to remove hardships or to correct other inequities, the official body shall  
70 observe the principle of maintaining maximum rents for such housing units at levels which will  
71 yield to owners a fair net operating income from such housing units. In determining whether the  
72 maximum rent for such housing units yields a fair net operating income, due consideration shall  
73 be given to, among other relevant factors: (1) increases in property taxes; (2) unavoidable  
74 increases in operating and maintenance expenses; (3) major capital improvement of the housing  
75 units, distinguished from ordinary repair, replacement, and maintenance; (4) increases or  
76 decreases in living space, services, furniture, furnishings or equipment; and (5) substantial  
77 deterioration of the housing units, other than ordinary wear and tear, or failure to perform  
78 ordinary repair, replacement, or maintenance.

79 (B) Such ordinance shall provide that no person shall bring an action to recover  
80 possession of a governmentally-involved housing unit, or of a formerly governmentally-  
81 involved housing unit, to the extent that such regulation is not otherwise preempted by federal  
82 law or Section Six of Chapter 708 of the Acts of Nineteen Hundred and Sixty-six as amended,  
83 unless:

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

85 (2) the tenant has violated an obligation or covenant of tenancy not inconsistent with  
86 Chapter 93A of the General Laws or this Act 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;

89 (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;

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

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

97 (6) the tenant has refused the owner reasonable access to the housing unit for the purpose  
98 of making necessary repairs or improvements required by law, or for the purpose of inspection

99 as permitted or required by the lease or law, or for the purpose of showing the housing unit to  
100 any prospective purchaser or mortgagee;

101 (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner;  
102 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. The provisions of this  
105 section shall be construed as additional restrictions on the right to recover possession of such  
106 housing units.

107 (C) Such ordinance shall also provide that no person shall remove any governmentally-  
108 involved or formerly governmentally-involved housing accommodation from low-income rental  
109 housing use (including but not limited to sale, lease, or other disposition of the property which  
110 may have such an effect), or convert such property to a condominium or cooperative, without  
111 first obtaining a permit for that purpose from the official body, to the extent that such provision  
112 is not preempted by federal law or Section Six of Chapter 708 of the Acts of Nineteen Hundred  
113 and Sixty-six as amended. Such permit may be subject to terms and conditions not inconsistent  
114 with the purposes and provisions of this Act, including, without limitation, (a) incentives to  
115 continue in effect the low-income restrictions previously in place for the property and (b) where  
116 sale, lease, or disposition of the property may result in the loss of all or a portion of the property  
117 for low-income rental housing use, the right of an incorporated tenants association in such  
118 housing, the city of Salem, the Salem Housing Authority, or non-profit community development  
119 corporations to negotiate for, acquire and operate such property on substantially equivalent terms  
120 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  
122 of 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  
130 of Nineteen Hundred and Sixty-six as amended, and so long as such regulation is consistent with  
131 the 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 Salem, including, without limitation, promoting the  
143 sale of properties to bona fide tenant organizations or non-profit community development

144 corporations under terms and conditions which would tend to maintain the income character of  
145 the property.

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

155 (H) All decisions of the official body may be appealed to the housing court department  
156 of the trial court, Northeast Division, by any person aggrieved thereby, whether or not previously  
157 a 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  
159 A 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  
161 trial court, Northeast 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  
168 violation of this Act, or any order, ordinance, rule or regulation adopted or promulgated  
169 hereunder. Whoever willfully violates any provision of this Act or any order, ordinance, rule or  
170 regulation adopted or promulgated hereunder or whoever makes a false statement in any  
171 testimony before the board or its agents, or whoever knowingly supplies the official body with  
172 false information shall be punished by a fine of not more than four hundred dollars or by  
173 imprisonment for not more than ninety days, or both; provided, however, that in the case of a  
174 second or subsequent offense, or where the violation continues after notice thereof, such person  
175 shall be punished by a fine of not more than two thousand dollars, or by imprisonment for not  
176 more than one year, or both.

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

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

182 SECTION 6. This Act shall take effect upon passage.