SENATE DOCKET, NO. 1215 FILED ON: 1/16/2015

SENATE . . . . . No. 690

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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:
Harriette L. Chandler	*First Worcester*
Frank I. Smizik	*15th Norfolk*
James B. Eldridge	*Middlesex and Worcester*
Benjamin Swan	*11th Hampden*
Cynthia S. Creem	*First Middlesex and Norfolk*
Thomas M. McGee	*Third Essex*
Jason M. Lewis	*Fifth Middlesex*
Michael O. Moore	*Second Worcester*
James J. O'Day	*14th Worcester*
Barbara A. L'Italien	*Second Essex and Middlesex*
Daniel M. Donahue	*16th Worcester*
Evandro C. Carvalho	*5th Suffolk*
Linda Dorcena Forry	*First Suffolk*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*
Michael F. Rush	*Norfolk and Suffolk*
Patricia D. Jehlen	*Second Middlesex*

Mary S. Keefe	*15th Worcester*
Michelle M. DuBois	*10th Plymouth*
Timothy J. Toomey, Jr.	*26th Middlesex*

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By Ms. Chandler, a petition (accompanied by bill, Senate, No. 690) of Harriette L. Chandler, Frank I. Smizik, Benjamin Swan, Cynthia S. Creem 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. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *593* 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:

SECTION 1. The General Laws, as appearing in the 2012 Official Edition, are hereby amended by inserting after chapter 40W the following chapter:

CHAPTER 40X.

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

Section 1. The general court finds and declares that: (a) a serious public emergency continues to exist with respect to the housing of a substantial number of persons in certain areas of the commonwealth residing in governmentally involved housing, inasmuch that many low-

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

19 Section 2. The following words or phrases as used in this chapter shall have the following
20 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 United
28 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 section
32 515 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 U.S.C.
34 section 5318, or the Housing Development Action Grant, hereinafter referred to as HoDAG, 42
35 U.S.C. section 1437o, in either case to the extent the project's rents are restricted or regulated
36 pursuant to a grant agreement with the U.S. Department of Housing and Urban Development or
37 otherwise;

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

40 (9) chapter 121A of the General Laws to the extent the chapter 121A approvals restrict
41 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, as amended
44 (42 U.S.C. section8013);

45 (12) section 207 of the National Housing Act, 12 U.S.C. section 1713, and subject to a
46 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 (h), and
48 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 line item
50 7004-9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part 49.00)

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

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

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

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

93 occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents,
94 grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9)
95 the owner seeks to recover possession for any other just cause not in conflict with the provisions
96 and purposes of this chapter or chapter 93A.

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

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

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

114 housing units. The appropriate state and municipal agencies shall assist owners by identifying
115 government housing resources.

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

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

134 Section 8. Any hearings regarding matters related to regulation of rents or removal
135 permits for governmentally involved housing or formerly governmentally involved housing or

136 regarding compliance with other provisions of this chapter, or any ordinance, by-law, rule, or
137 regulation adopted hereunder, shall be conducted by the municipality or its designee in
138 accordance with the provisions of section 11 of chapter 30A.

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

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

159 continues after notice thereof, such person shall be punished by a fine of not more than $2,000,
160 or imprisonment for not more than one year, or both.

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

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

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