

SENATE No. 617

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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 40P the
2 following chapter:

3 CHAPTER 40Q.

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

6 Section 1. The general court finds and declares that: (a) a serious public emergency exists
7 with respect to the housing of a substantial number of persons in certain areas of the
8 commonwealth residing in governmentally involved housing, inasmuch as there is a threat 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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. section 8013);

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

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

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

For purposes of this section, "governmentally involved housing" shall not include the following: (1) housing units owned or acquired by the municipality through tax foreclosure; (2) housing units in a one to ten family building or structure that is not part of a larger housing

development, whether on one or more sites;(3) structures containing housing units subsidized with mobile tenant-based rental assistance that would not otherwise come within the definition of governmentally involved housing;(4) structures containing housing units which were subject to chapter 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the acts of 1970, chapter 843 of the acts of 1970, chapter 843 of the acts of 1971, chapter 45 of the acts of 1987, chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which would otherwise not come within the definition of governmentally involved housing; (5) public housing owned or operated by a local housing authority under chapter 121B, the United States Housing Act of 1937, or any successor act or public housing programs formerly assisted under the United States Housing Act of 1937; (6) housing units which first became governmentally involved after October 1, 1996, unless the municipality enacts a different date; and (7) housing units where the sole government involvement is the owner's participation in federal, state, or municipal funded programs for home repairs, energy conservation, or lead paint abatement.

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

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

Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy

of governmentally involved or formerly governmentally involved housing to the extent such regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966, once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer exists.(b) Said municipality shall establish as the maximum rent for governmentally involved and formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six months before the basis for federal or Massachusetts Housing Finance Agency rent preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of the date of the loss of preemption.

Section 4. (a) In a municipality accepting the provisions of this chapter, no person shall bring an action to recover possession of a governmentally involved or formerly governmentally involved housing unit to the extent that such regulation is not otherwise preempted by federal law or section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant has failed to pay the rent to which the owner is entitled;(2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter 93A or this chapter other than the obligation to surrender possession upon proper notice, and has failed to cure the violation after having received written notice thereof; (3) the tenant is causing, committing or permitting, a nuisance in, or substantial damage to, the housing unit, or is creating substantial interference with the comfort, safety, or enjoyment of the owner or other occupants of the same or any adjacent unit; (4) the tenant has used or permitted use of a housing unit for illegal purposes; (5) the tenant, who had a written lease or rental agreement which has terminated, has refused, after written requests or demand by the owner, to execute a written extension or renewal thereof for a further term of like duration on terms not inconsistent with or violative of any provision of this act; (6) the tenant has refused the owner reasonable access to the housing unit for the purpose of making necessary repairs or

improvements required by law, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the housing unit to any prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the provisions and purposes of this chapter or chapter 93A.

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

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

121 substantially equivalent terms and conditions as offered or available to a bona-fide third-party
122 purchaser.

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

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

141 Section 8. A municipality accepting the provisions of this chapter may adopt such
142 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem

necessary or appropriate to effectuate the purposes hereof and may grant exemptions and exceptions thereto when such action would tend to maintain or increase the supply of affordable housing in the municipality, including, without limitation, to promote the sale of the property to a bona-fide tenant organization or non-profit community development corporation under terms and conditions which would tend to maintain the income character of the property.

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

Section 10. All decisions of the municipality or its designee may be appealed to the housing court if available, the district court or the superior court in the jurisdiction or county where the municipality is located by any person aggrieved thereby, whether or not previously a party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on application of the municipality or its designee or any aggrieved person may restrain or enjoin violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court may allow any necessary parties to be joined in or to intervene in any action brought hereunder and may in its discretion allow or require an action to proceed as a class action.

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

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

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

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