

HOUSE No. 3428

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 adoption of the accompanying bill:

An Act to adopt protections for New Bedford's governmentally involved housing stock.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/14/2011</i>
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>	<i>2/14/2011</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>2/15/2011</i>

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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

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In the Year Two Thousand Eleven
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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
3 in New Bedford residing in governmentally-involved housing, in as much as there is a threat that
4 many low-income individuals and families residing in such housing, particularly those elderly
5 and disabled, may be threatened with displacement as a result of prepayment of mortgage
6 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and
7 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and
8 subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage
9 within the city for low-income families and voters, and whereas, in approving Chapter 40 P of

10 the General Laws, the voters did not exempt such housing from protection or regulation and
11 whereas it is the city's policy to encourage owners of this governmentally-involved housing to
12 accept incentives to keep such housing affordable and avert displacement, that such emergency
13 should be met by the city of New Bedford immediately; therefore, this act is declared to be in the
14 public interest.

15 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the
16 contrary, including, without limitation, the provisions of chapter forty P of the General Laws and
17 chapter 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of
18 New Bedford shall determine that the circumstances described in section one hereof continue to
19 exist, the City of New Bedford shall by ordinance regulate the rent for use or occupancy of
20 governmentally-involved or formerly governmentally-involved housing to the extent such
21 regulation is not preempted by federal law or by section six of chapter 708 of the Acts of
22 nineteen hundred and sixty-six as amended, once the basis for federal or state rent regulation or
23 preemption no longer exists, except that market units in projects formerly assisted under sections
24 25 through 27 of chapter 23 (a) of the General Laws shall not be deemed to be regulated by the
25 state for purposes of this act. For purposes of this act, "governmentally-involved housing" is
26 defined as housing units which the United States, the Commonwealth or any authority created
27 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes
28 such housing units, and (ii) regulates the individual rents thereof, including without limitation
29 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as
30 amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as amended
31 (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable
32 Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the Acts of

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

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

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

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

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

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

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

55 For the purpose of this act, "formerly governmentally-involved housing" is defined
56 as housing which was governmentally-involved housing as of July 1, 1996 or which becomes
57 governmentally-involved housing after July 1, 1996 but which then no longer is owned,
58 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the
59 Commonwealth, or any authority created under the laws thereof, provided that "formerly
60 governmentally involved housing" shall include any housing receiving subsidy under Section
61 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

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

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

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

76 determining whether the maximum rent for such housing units yields a fair net operating income,
77 due consideration shall be given to, among other relevant factors: (1) increases in property taxes;
78 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement
79 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)
80 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)
81 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to
82 perform ordinary repair, replacement, or maintenance.

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

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

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

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

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

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

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

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

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

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

112 (C) Such ordinance shall also provide that no person shall remove any governmentally-
113 involved or formerly governmentally-involved housing accommodation from low-income rental
114 housing use (including but not limited to sale, lease, or other disposition of the property which
115 may have such an effect), or convert such property to a condominium or cooperative, without
116 first obtaining a permit for that purpose from the official body, to the extent that such provision
117 is not preempted by federal law or section six of chapter 708 of the acts of nineteen hundred and

118 sixty-six as amended. Such permit may be subject to terms and conditions not inconsistent with
119 the purposes and provisions of this act, including, without limitation, (a) incentives to continue in
120 effect the low-income restrictions previously in place for the property and (b) where sale, lease,
121 or disposition of the property may result in the loss of all or a portion of the property for low-
122 income rental housing use, the right of an incorporated tenants association in such housing, the
123 city of New Bedford, the New Bedford Housing Authority, or non-profit community
124 development corporations to negotiate for, acquire and operate such property on substantially
125 equivalent terms and conditions as offered or available to a bona fide third-party purchaser.

126 (D) To the extent not preempted by federal law or section six of chapter 708 of the acts
127 of nineteen hundred and sixty-six as amended, such ordinance shall require that owners of
128 governmentally-involved housing, or formerly governmentally involved housing, affirmatively
129 seek out and accept any prospective governmental housing resources, whether tenant-based or
130 project-based, which maximize affordability of the housing units consistent with the income
131 character of the property and the owner's right to obtain a fair net operating income for the
132 housing units, provided that the City shall assist owners by identifying such governmental
133 housing resources.

134 (E) To the extent not preempted by federal law or section six of chapter 708 of the acts
135 of nineteen hundred and sixty-six as amended, and so long as such regulation is consistent with
136 the owner's right to obtain a fair net operating income, such ordinance shall also provide that the
137 City may establish local preferences, priorities, and income limits for admission to
138 governmentally-involved housing or formerly governmentally-involved housing upon unit
139 turnover, consistent, to the extent practicable, with the income profile of the property twelve
140 months prior to the date of the loss of rent preemption or the decision to not renew an expiring

141 subsidy contract. The official body may approve an alternate plan requested by the owner,
142 consistent with the provisions of this act. No ordinance or regulation shall require an owner to
143 create a tenancy involving any person with a history of conduct which would, if repeated, be
144 grounds for eviction from such housing.

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

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

160 (H) All decisions of the official body may be appealed to the housing court department
161 of the trial court, Southeast Division, by any person aggrieved thereby, whether or not previously
162 a party in the matter, within thirty calendar days after notice of such decision. Judicial review of

163 adjudicatory decisions shall be conducted in accordance with section fourteen of chapter thirty A
164 of the General Laws. Judicial review of regulations shall be conducted in accordance with
165 section seven of chapter thirty A of the General Laws. The housing court department of the trial
166 court, Southeast Division, shall have jurisdiction to enforce the provisions hereof and any
167 ordinance, rule or regulation adopted hereunder, and on application of the board or any aggrieved
168 person may restrain or enjoin violations of any such ordinance, rule, or regulation. In the
169 interests of justice, the court may allow any necessary parties to be joined in or to intervene in
170 any action brought hereunder and may in its discretion allow or require an action to proceed as a
171 class action.

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

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

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

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