

HOUSE No. 3507

The Commonwealth of Massachusetts

PRESENTED BY:

Geoff Diehl

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 provide for the Mass Emergency Homeowner Assistance Program.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------------|--|------------------|
| <i>Geoff Diehl</i> | <i>7th Plymouth</i> | <i>1/18/2013</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>6/6/2013</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> | <i>6/4/2013</i> |
| <i>Kimberly N. Ferguson</i> | <i>1st Worcester</i> | <i>6/4/2013</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> | <i>1/30/2013</i> |
| <i>Robert L. Hedlund</i> | <i>Plymouth and Norfolk</i> | <i>1/31/2013</i> |
| <i>Timothy R. Madden</i> | <i>Barnstable, Dukes and Nantucket</i> | <i>1/31/2013</i> |
| <i>Shaunna O'Connell</i> | <i>3rd Bristol</i> | <i>6/5/2013</i> |
| <i>David T. Vieira</i> | <i>3rd Barnstable</i> | <i>6/7/2013</i> |

HOUSE No. 3507

By Mr. Diehl of Whitman, a petition (accompanied by bill, House, No. 3507) of Geoff Diehl and others relative to mortgage assistance for citizens who are financially unable to make mortgage payments. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to provide for the Mass Emergency Homeowner Assistance Program.

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. Section 14 of chapter 244 of the General Laws, as amended by chapter 194
2 of the acts of 2012 is hereby amended by inserting after the first sentence the following
3 sentence:- A copy of such notice shall also be mailed no less than 30 days prior to the date of
4 sale by any such person to the Massachusetts Housing Finance Agency.

5 SECTION 2. Section 35B of chapter 244 of the General Laws, as added by chapter 194
6 of the acts of 2012 is hereby amended by striking out the first paragraph of subsection (b) and
7 inserting in place thereof the following paragraph:-

8 (b) A creditor shall not cause publication of notice of a foreclosure sale, as required by
9 section 14, upon certain mortgage loans unless it has (i) received a determination on a
10 mortgagor's application for emergency mortgage assistance payments from the Massachusetts
11 Housing Finance Agency, or the applicable time periods provided for in such program has
12 expired whichever is earlier and (ii) taken reasonable steps and made a good faith effort to avoid
13 foreclosure. A creditor shall have taken reasonable steps and made a good faith effort to avoid
14 foreclosure if the creditor has considered: (i) an assessment of the borrower's ability to make an
15 affordable monthly payment; (ii) the net present value of receiving payments under a modified
16 mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the
17 interests of the creditor, including, but not limited to, investors.

18 SECTION 3. Chapter 708 of the acts of 1966 is hereby amended by inserting after section
19 5 the following section:-

20 Section 5A. (a) For the purposes of this section the following terms shall have the
21 following meanings:-

22 “Gross household income”, the total income of a household, a married couple, and
23 children residing in the same household as the applicant and any other resident of the household
24 declared by the mortgagor as a dependent for federal tax purposes.

25 “Housing expense”, the sum of the mortgagor's monthly maintenance, utility, hazard
26 insurance expense, taxes and required mortgage payments, including escrows.

27 “Net effective income”, gross household income less state and federal income and social
28 security taxes.

29 (b) Loans secured by liens on residential real property located in the commonwealth to
30 residents of Massachusetts eligible for loans as described in this section. MHFA shall carry out
31 the emergency mortgage assistance payments program established by this section. MHFA shall
32 prepare a uniform notice for each mortgagor receiving a notice pursuant to section 14 of chapter
33 244 of the general laws. The notice shall include a statement that if the mortgagor was unable to
34 resolve the delinquency or default the mortgagor may apply to the agency or its duly authorized
35 agent at the address and phone number listed in the notice in order to obtain an application and
36 information regarding the homeowner's emergency mortgage assistance program. If the
37 mortgagor applies for mortgage assistance payments, the agency shall promptly notify all of the
38 mortgagees secured by the mortgagor's real property. The agency shall make a determination of
39 eligibility within 30 calendar days of receipt of the mortgagor's application. During the time that
40 the application is pending, no mortgagee may commence legal action to foreclose upon its
41 mortgage with the mortgagor. If the mortgagor's application for mortgage assistance payments is
42 denied, the mortgagee may at any time thereafter take any legal action to enforce the mortgage
43 without any further restriction or requirements under this section. Financial institutions shall not
44 be the duly authorized agents of the agency and shall not make the decision on the approval of
45 assistance under this section.

46 (c) No assistance may be made with respect to a mortgage under this section unless all of
47 the following are established:

48 (1) the property securing the mortgage, is a one-family residence, or two-family owner-
49 occupied residence including one-family units in a condominium project or a membership
50 interest and occupancy agreement in a cooperative housing project, is the principal residence of
51 the mortgagor and is located in this commonwealth;

52 (2)(i) any mortgagee has indicated to the mortgagor its intention to foreclose; or (ii)
53 payments under any mortgage have been contractually delinquent for at least 60 days;

54 (3) the mortgage is not insured by the Federal Housing Administration under Title II of
55 the National Housing Act;

56 (4) the mortgagor is a permanent resident of the commonwealth and is suffering financial
57 hardship due to circumstances beyond the mortgagor's control which render the mortgagor
58 unable to correct the delinquency or delinquencies within a reasonable time and make full
59 mortgage payments;

60 (5) MHFA has determined that there is a reasonable prospect that the mortgagor will be
61 able to resume full mortgage payments within 36 months after the beginning of the period for
62 which assistance payments are provided under this article and pay the mortgage or mortgages in
63 full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for
64 completing mortgage payments;

65 (6) the mortgagor has applied to the agency for assistance on an application form
66 prescribed by the agency for this use which includes a financial statement disclosing all assets
67 and liabilities of the mortgagor, whether singly or jointly held, and all household income
68 regardless of source; provided, that any applicant who intentionally misrepresents any financial
69 information in conjunction with the filing of an application for assistance under this section may
70 be denied assistance or required to immediately repay any amount of assistance made as a result
71 of such misrepresentation and the mortgagee may at any time thereafter take any legal action to
72 enforce the mortgage without any further restrictions or requirements under this section;

73 (7) the mortgagee is not prevented by law from foreclosing upon the mortgage;

74 (8) MHFA has determined, based on the mortgagor's financial statement, that the
75 mortgagor has insufficient household income or net worth to correct the delinquency or
76 delinquencies within a reasonable period of time and make full mortgage payments;

77 (9) the mortgagor shall have exhausted unemployment compensation benefits during the
78 calendar years of 2013, 2014 or 2015;

79 (10) the mortgagor shall have had a favorable credit history prior to any period of
80 unemployment. Favorable credit history shall be determined by the agency;

81 (11) the mortgagors shall have a level of income from other family members and property
82 income not in excess of an amount which indicates a significant need for assistance in making
83 timely mortgage payments; provided, that such income ceilings shall be determined by the
84 agency;

85 (12) all of the mortgagees shall agree to the eligibility of the mortgagor to participate in
86 the homeowner's emergency mortgage assistance program; and

87 (13) any other requirements established by MHFA.

88 (d) Upon a determination that the conditions of eligibility set forth in this section have
89 been met by a mortgagor and money is available in the homeowners' emergency mortgage
90 assistance program, the mortgagor shall become eligible for the assistance.

91 If the agency determines that a mortgagor has not met the conditions of eligibility
92 described in subsection (c), the mortgagor shall be prohibited from reapplying for assistance
93 under this section for a period 6 months from the date of such determination unless there is a
94 material change in circumstances: provided, however, that nothing in this subsection shall
95 prohibit any mortgagee from commencing legal action to enforce the mortgage without any
96 further restriction or requirement under this article whenever MNHFA determines that the
97 mortgagor is ineligible for assistance as provided in this section.

98 (e) If MHFA determines that a mortgagor is eligible for assistance under this section,
99 MHFA shall pay directly to each mortgagee secured by the mortgagor's real estate payments on
100 behalf of the mortgagor, secured by the mortgagor's real estate. MHFA shall pay to each
101 mortgagee the full amount then due to that mortgagee pursuant to the terms of the mortgage
102 without regard to any acceleration under the mortgage, or the full amount of any alternate
103 mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but
104 not be limited to, the amount of principal, interest, taxes, assessments, flood or hazard insurance
105 any mortgage insurance or credit insurance premiums. The initial payment made by MHFA to
106 each mortgagee shall be an amount which makes each mortgage current and pays reasonable
107 costs and reasonable attorneys' fees already incurred by such mortgagee.

108 (f) After the mortgagor has paid any and all arrearages pursuant to subsection (b) to each
109 mortgagee, the mortgagor may be entitled to monthly mortgage assistance payments pursuant to
110 this section. A mortgagor on whose behalf the agency is making mortgage assistance payments
111 shall pay monthly payments to MHFA. Such payments shall be in an amount which will cause
112 the mortgagor's total housing expense not to exceed 35 per cent of the mortgagor's net income.
113 This shall be the maximum amount the mortgagor can be required to pay during the 36 months a
114 mortgagor is eligible for emergency mortgage assistance. The mortgagor shall make the above
115 payment to MHFA at least 7 days before each mortgage payment is due to each mortgagee.
116 Upon receipt of this payment from the mortgagor, MHFA or its duly authorized agent shall send
117 the total mortgage payments payment directly to each mortgagee and shall include housing
118 expenses.

119 If the mortgagor is receiving emergency mortgage assistance under a program other than
120 that established in this section, the amount of the payment he or she is required to make to the
121 agency under this section shall take into consideration the amount of assistance such person is
122 receiving under such other programs.

123 (g) The amount by which the mortgagor assistance payments made by MHFA to all
124 mortgagees exceeds the amount of payments made by the mortgagor to MHFA shall be a loan in

125 that amount by MHFA to the mortgagor. Such loan shall be evidenced by such documents as
126 MHFA shall determine and shall be subject to repayment with interest and secured as provided
127 herein.

128 (h) If the mortgagor fails to pay to MHFA any amounts due directly from him or her
129 under this section within 15 days of the due date, MHFA shall review the mortgagor's financial
130 circumstances as provided in this section to determine whether the delinquency is the result of a
131 change in the mortgagor's financial circumstance. If the delinquency is not the result of a change
132 in the mortgagor's financial circumstances, MHFA shall terminate the emergency mortgage
133 assistance payments and any mortgagee may at any time thereafter take any legal action to
134 enforce its mortgage without any further restriction or requirement under this section. If the
135 delinquency is the result of a change in the mortgagor's financial circumstances, MHFA shall
136 modify the mortgagor's required payments to MHFA as MHFA shall determine.

137 (i) If any mortgagee scheduled to receive payments from MHFA pursuant to this section
138 fails to receive from MHFA the full amount of such payment by within 30 days of the scheduled
139 due date, or if a mortgagor fails to observe and perform all the terms, covenants and conditions
140 of the mortgage, that mortgagee may at any time thereafter take any legal action to enforce the
141 mortgage without any further restriction or requirement under this section.

142 (j) Payments under this section shall be provided for a period not to exceed 36 months,
143 either consecutively or non-consecutively. MHFA shall establish procedures for periodic review
144 of the mortgagor's financial circumstances for the purpose of determining the necessity for
145 continuation, termination or adjustment of the amount of the payments. Payments shall be
146 discontinued when MHFA determines that, because of the changes in the mortgagor's financial
147 circumstances the payments are no longer necessary in accordance with the standards set forth in
148 section

149 (k) Repayment of amounts owed to MHFA from a mortgagor shall be secured by a
150 mortgage lien on the property and by such other obligation as MHFA may require. The priority
151 of any lien obtained by MHFA under this section shall be determined in the same manner as the
152 lien of a general secured creditor of the mortgagor. The lien or other security interest of MHFA
153 shall not be deemed to take priority over any other secured lien or secured interest in effect
154 against the mortgagor's property on the date assistance payments begin. MHFA may allow
155 subordination of the mortgage assistance lien if such subordination is necessary to permit the
156 mortgagor to obtain a home improvement loan for repairs necessary to preserve the property.

157 (l) Upon approval of mortgage assistance, MHFA shall enter into an agreement with the
158 mortgagor for repayment of all mortgage assistance made by MHFA plus interest as provided in
159 clause (5) of this subsection. The agreement shall provide for monthly payments by the
160 mortgagor and be subject to the following forbearance provisions:

161 (1) if the mortgagor's total housing expense as defined in this section is less than 35 per
162 cent of his or her net effective income, the mortgagor shall pay to MHFA the difference between
163 35 per cent of the mortgagor's net effective income and the mortgagor's total housing expense
164 unless otherwise determined by MHFA after examining the mortgagor's financial circumstances
165 and ability to contribute to repayment of the mortgage assistance;

166 (2) if the mortgagor's total housing expense is more than 35 per cent of his or her net
167 effective income, repayment of the mortgage assistance shall be deferred until the mortgagor's
168 total housing expense is less than 35 per cent of his or her net effective income;

169 (3) if repayment of mortgage assistance is not made by the date any mortgage is paid, the
170 mortgagor shall make mortgage assistance repayments in an amount not less than the mortgage
171 payment until the mortgage assistance is repaid;

172 (4) MHFA shall establish procedures for periodic review of the mortgagor's financial
173 circumstances to determine the amounts of repayment required under this section;

174 (5) interest shall accrue on all mortgage assistance made by MHFA at the rate equal to
175 MHFA's current market rate for residential mortgages. Interest shall start to accrue whenever the
176 mortgagor begins to make repayment under this section. Interest shall accrue only during the
177 period in which the mortgagor is required to make repayment under this section. When any
178 mortgage for which mortgage assistance was made is paid, interest shall then accrue on all
179 mortgage assistance due and owing at the same rate and on the same basis as the mortgage for
180 which the mortgage assistance was made; and

181 (6) all moneys received from mortgagors for repayment of mortgage assistance shall be
182 deposited in MHFA's homeowner's emergency mortgage assistance fund established by MHFA
183 in this section for the sole purpose of implementing the provisions of this section.

184 (m) The homeowner's emergency mortgage assistance fund is hereby created as a
185 separate account within MHFA for the sole purpose of implementing the provisions of this
186 section. No other agency funds, moneys or interest earnings shall be utilized for the purposes of
187 this section. The homeowner's emergency mortgage assistance fund shall only be utilized by
188 MHFA whenever funds are appropriated by the general court for the purposes provided for in
189 this section.

190 (n) All moneys paid by mortgagors to the agency to repay loans provided by MHFA shall
191 be accounted for and transferred back to the source from which the funds are appropriated unless
192 the funds cannot be lapsed or transferred pursuant to any other act of the general court: provided,
193 however, that investment and interest earnings on moneys from this fund may be used by MHFA
194 for the administrative costs of the program.

195 (o) The provisions of this section shall not be applicable to any mortgage which becomes
196 delinquent at any time when MHFA does not have money currently available in the homeowner's
197 emergency mortgage assistance fund to approve applications for emergency mortgage assistance
198 or to continue making assistance payments on behalf of mortgagors previously approved. In the
199 event that the funds available to MHFA in the homeowner's emergency mortgage assistance fund
200 for purposes of this section become insufficient to approve application for emergency mortgage
201 assistance, or to continue making assistance payments on behalf of mortgagors previously
202 approved, MHFA shall immediately post a notice on its website and publish an announcement to
203 that effect and mortgagees shall no longer be subject to the provisions of this and mortgagees
204 may at any time thereafter take legal action to enforce the mortgage without any further
205 restriction or requirement under this section.

206 SECTION 4. Notwithstanding any general or special law to the contrary, a financial
207 institution, shall not be deemed to be in violation of any statute, regulation or rule of supervisory
208 authorities by reason of any agreement, forbearance of modification of the payment or other
209 terms of a mortgage as an effect of the emergency mortgage assistance program established by
210 this act or by reason of actions taken or not taken pursuant to the program. No mortgage loan as
211 to which assistance payments are being made shall be deemed to be delinquent or classified as
212 such by supervisory authorities during the continuance of such assistance payments. For the
213 purposes of this section "financial institution" shall mean any banking corporation or institution,
214 trust company, national bank, credit union, insurance company or related corporation,
215 partnership, foundation or other institution engaged in lending funds and authorized to do such
216 business within the commonwealth.

217 SECTION 5. Within 60 days of the effective date of this act, the Massachusetts Housing
218 Finance Agency shall adopt uniform notices, rules and regulations and program guidelines for
219 the implementation of section 3 of this act. The agency shall report annually to the general court
220 on the effectiveness of the homeowner's emergency mortgage assistance program in
221 accomplishing the purposes of this act.