

SENATE No. 593

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: |
|------------------------------|------------------------------------|
| <i>Harriette L. Chandler</i> | <i>First Worcester</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> |
| <i>Katherine M. Clark</i> | <i>Fifth Middlesex</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Gale D. Candaras</i> | <i>First Hampden and Hampshire</i> |
| <i>Thomas M. McGee</i> | <i>Third Essex</i> |
| <i>Michael F. Rush</i> | <i>Norfolk and Suffolk</i> |
| <i>Christopher G. Fallon</i> | <i>33rd Middlesex</i> |
| <i>John P. Fresolo</i> | <i>16th Worcester</i> |
| <i>John J. Lawn, Jr.</i> | <i>10th Middlesex</i> |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> |
| <i>Thomas P. Kennedy</i> | <i>Second Plymouth and Bristol</i> |

SENATE No. 593

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 593) of Harriette L. Chandler, James J. O'Day, Mary S. Keefe, Katherine M. Clark 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. 581 OF 2011-2012.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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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 court finds and declares that: (a) a serious public
2 emergency continues to exist with respect to the housing of a substantial number of persons in
3 certain areas of the commonwealth residing in governmentally involved housing, inasmuch 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 or rent restrictions, expiring subsidy contracts, and expected increases in
7 rent, and there is a threat that affordable housing stock will be lost due to expiration of use or
8 rent restrictions and such pre-payment, further exacerbating an extreme housing shortage for
9 low-income families and individuals; (b) it is the commonwealth's policy to encourage owners of
10 this governmentally involved housing to accept incentives to keep such housing affordable and
11 avert displacement; (c) such emergency should be met by the commonwealth immediately and
12 with due regard for the rights and responsibilities of its local communities; therefore, this chapter
13 is declared to be in the public interest.

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

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

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

20 (2) section 221(d) of the National Housing Act, 12 U.S.C. section
21 1715l(d);

22 (3) section 236 of the National Housing Act, 12 U.S.C. section
23 1715z-1;

24 (4) any project-based programs for low-income persons under section
25 8 of the United States Housing Act of 1937, 42 U.S.C. section 1437f;

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

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

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

35 (8) the federal low-income housing tax credit program under section
36 42 of the U.S. Internal Revenue Code, 26 U.S.C. section 42;

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

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

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

42 (12) section 207 of the National Housing Act, 12 U.S.C. section
43 1713, and subject to a rent regulatory agreement pursuant to chapter 121A of the General Laws;

44 (13) section 220 of the National Housing Act, 12 U.S.C. section
45 1715k(a) and (h), and subject to a rent regulatory agreement pursuant to chapter 121A of the
46 General Laws; or

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

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

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

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

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

85 like duration on terms not inconsistent with or violative of any provision of this act; (6) the
86 tenant has refused the owner reasonable access to the housing unit for the purpose of making
87 necessary repairs or improvements required by law, or for the purpose of inspection as permitted
88 or required by the lease or by law, or for the purpose of showing the housing unit to any
89 prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a
90 subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the
91 owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy
92 or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren,
93 parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-
94 law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the
95 provisions and purposes of this chapter or chapter 93A.

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

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

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

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

123 to create a tenancy involving any person with a history of conduct which would, if repeated, be
124 grounds for eviction from such housing.

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

133 Section 8. Any hearings regarding matters related to regulation of rents or
134 removal permits for governmentally involved housing or formerly governmentally involved
135 housing or regarding compliance with other provisions of this chapter, or any ordinance, by-law,
136 rule, or regulation adopted hereunder, shall be conducted by the municipality or its designee in
137 accordance with the provisions of section 11 of chapter 30A.

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

150 Section 10. It shall be unlawful for any person to do or omit to do any action in
151 violation of this chapter or any order, ordinance, by-law, rule or regulation adopted or
152 promulgated under this chapter. Whoever willfully violates any provision of this chapter or any
153 order, ordinance, by-law, rule or regulation adopted or promulgated under this chapter or
154 whoever makes a false statement in any testimony before the municipality or its designee, or
155 whoever knowingly supplies the municipality or its designee with false information, in
156 connection with a proceeding under this chapter, shall be punished by a fine of not more than
157 \$400 or by imprisonment for not more than 90 days, or both. In the case of a second or
158 subsequent offense, or where the violation continues after notice thereof, such person shall be
159 punished by a fine of not more than \$2,000, or imprisonment for not more than one year, or both.

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

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

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