SENATE DOCKET, NO. 1572 FILED ON: 1/16/2015

SENATE . . . . . No. 1090

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

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 relative to vacant, foreclosing and foreclosed property in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Barbara A. L'Italien	*Second Essex and Middlesex*
Michael O. Moore	*Second Worcester*
Jason M. Lewis	*Fifth Middlesex*
Mary S. Keefe	*15th Worcester*
Frank A. Moran	*17th Essex*
James T. Welch	*Hampden*
Michelle M. DuBois	*10th Plymouth*
Chris Walsh	*6th Middlesex*
Jose F. Tosado	*9th Hampden*
Benjamin Swan	*11th Hampden*

SENATE DOCKET, NO. 1572 FILED ON: 1/16/2015

SENATE . . . . . No. 1090

By Mrs. L'Italien, a petition (accompanied by bill, Senate, No. 1090) of Barbara L'Italien, Michael O. Moore, Jason M. Lewis, Mary S. Keefe and other members of the General Court for legislation relative to vacant, foreclosing and foreclosed property in the Commonwealth. Municipalities and Regional Government.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to vacant, foreclosing and foreclosed property in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to protect citizens of the Commonwealth and Municipalities impacted by the mortgage foreclosure crisis by further expanding existing options for Municipalities to further specify and ensure compliance with state sanitary code, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Chapter 111 of the General Laws is hereby amended by inserting after section 127(l)

the following new section- Section 127(m) which section shall be named: “some municipal options; vacant and foreclosing property code enforcement”

12 (a) For purposes of this section, the following terms shall have the following meanings
13 unless the context clearly requires otherwise:

14 “Certificate Of Compliance" shall mean a certificate issued by the Commissioner to the
15 Responsible Party for a Vacant, and/or Foreclosing Property upon compliance with the
16 provisions of Section 13.

17 “Commissioner”, the municipality’s building inspector or commissioner or other
18 administrative chief in a town responsible under M.G.L. c. 134 § 3 for administering and
19 enforcing the state sanitary and/or building code.

20 “Days”, consecutive calendar days.

21 “ENTITY” shall mean a business organization, or any other kind of organization,
22 including without limitation, a corporation, partnership, trust, limited liability corporation,
23 limited liability partnership, joint venture, sole proprietorship, or any other category of
24 organization, and any employee, agent, servant or other representative of such entity.

25 “FORECLOSED PROPERTY” shall mean a property on which a Foreclosure Deed has
26 been recorded until such property has been purchased from a Mortgagee or its Mortgage
27 Servicer.

28 “FORECLOSING PROPERTY” shall mean a property on which the Mortgagee or its
29 agent has filed a Complaint with the Land Court or Superior Court pursuant to the Massachusetts
30 Soldiers’ and Sailors’ Civil Relief Act (St. 1943, c. 57 (1943), as amended through St. 1988, c.
31 142) until such time as a Foreclosure Deed has been recorded in the Southern Essex Registry of
32 Deeds.

33 “PERSON” shall mean any individual, corporation, partnership, limited liability
34 partnership, limited liability company, trust or other entity.

35 “PROPERTY” means any real property, residential or commercial, or portion thereof,
36 located in the City or town, including building or structures situated on the property.

37 “Residential Property”, any property that contains one or more dwelling units used,
38 intended, or designed to be occupied for living purposes.

39 “RESPONSIBLE PARTY” shall mean:

40 Every Person, entity, servicer, property manager, or real estate broker, who or which,
41 alone or severally with others:

42 1. Has care, charge or control of Property, including but not limited to any dwelling,
43 dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile
44 home park, or any administrator, executor, trustee or guardian of the estate of the holder of legal
45 title; or

46 2. Is a Mortgagee of any such Property who has filed a Complaint with the Land
47 Court or Superior Court pursuant to the Massachusetts Soldiers’ and Sailors’ Civil Relief Act
48 (St. 1943, c. 57 (1943), as amended through St. 1988, c. 142), including its successors or assigns;
49 or

50 3. Is an agent, trustee or other Person appointed by the courts and vested with
51 possession or control of any such Property;

52 4. Is a Mortgagee who has made entry on any such Property, pursuant to the terms of
53 the Mortgage, in order to make repairs upon mortgagor's failure to do so.

54 "VACANT PROPERTY" shall mean structure or building not legally occupied.

55 (b) Any city or town which accepts the provisions of this section may impose a vacant,
56 foreclosing and foreclosed property registration and security program as provided in section (b
57 and c) of this chapter.

58 All responsible parties must register vacant, foreclosing or foreclosed residential
59 properties with Commissioner on forms provided by the Commissioner. All registrations must
60 provide the Commissioner with the name, local (within 20 miles of the Property) address, and
61 telephone number of the Responsible Party or their local agent who can be contacted in case of
62 emergency. The responsible party must also obtain a certificate of compliance that the property
63 was inspected and identify whether the property is vacant. If the property is vacant, the
64 registration must designate a local individual or local property management company responsible
65 for the security and maintenance of the property. This designation must state the individual or
66 company's name, phone number and local mailing address.

67 This registration must be received within thirty days of the property becoming vacant,
68 foreclosing or foreclosed.

69 All property registrations are valid for one year. An annual registration fee to be set by
70 the municipality must accompany the registration form. The fee and registration are valid for the
71 calendar year, or remaining portion of the calendar year in which the registration was initially
72 required. Subsequent registrations and fees are due by the first (1st) day of January of each year
73 and must certify whether the foreclosed property remains vacant.

74 Once the property is sold or is no longer vacant, the responsible party must provide proof
75 of sale or written notice of occupancy to the Commissioner.

76 (c) Properties subject to this section must be maintained in accordance with all applicable
77 Sanitary, Building Codes, and local regulations and the following requirements.

78 The responsible party or local agent must cause the property to be inspected on a monthly
79 basis until sold or no longer vacant.

80 Maintain liability insurance on the Property and furnish the Commissioner with a copy of
81 said certificate of insurance; and,

82 The property must contain a posting with the name and twenty-four (24) hour contact
83 phone number of the local individual or property management company responsible for the
84 maintenance. The sign must also indicate the name, address and telephone number of the
85 property responsible party and the responsible party's authorized agent for the purpose of service
86 of process. This sign must be posted on the front of the property so it is clearly visible from the
87 street.

88 If the Commissioner determines that a Property has been abandoned but Occupants
89 remain, and conditions of disrepair threaten the health and safety of the occupants: the
90 Commissioner shall notify the Responsible Party of the conditions of disrepair in writing. The
91 Responsible Party will then have fifteen (15) days to comply with the requirements set forth in
92 this Section.

93 The Commissioner, upon being informed of the existence of a Vacant, Foreclosing or
94 Foreclosed Property without a Certificate of Compliance, shall cause notice to issue to the
95 Responsible Party of the status of said Property and shall order said Responsible Party to
96 immediately obtain a Certificate of Compliance. If any Responsible Party fails to comply with
97 said order, Commissioner or agents thereof may enter the Property to inspect, and further may

98 seek court orders to enter upon the premises to secure, clean and remove any pools of stagnant
99 water an otherwise enforce the Sanitary Code.

100 Compliance with this section shall not relieve the responsible party of any other
101 obligation set forth in statute, regulation, covenant conditions and restrictions and/or
102 homeowners' association rules and regulations.

103 Maintenance of Vacant Properties. In addition to the requirements of This Section, the
104 Responsible Party, within fifteen (15) days of the property becoming vacant, shall:

105 (1) As may be required by the Commissioner, file one set of space utilization floor
106 plans for any Buildings on said Vacant Property with the Commissioner and one set of said plans
107 with the Commissioner. The Responsible Party shall certify space utilization plans as accurate
108 twice annually, in January and July; and

109 (2) At the discretion of the Commissioner, secure all windows and door openings and
110 ensure that the Property is secured from all unauthorized entry continuously in accordance with
111 the United States Fire Administration, National Arson Initiative Board up Procedures or provide
112 twenty-four (24) hour on-site security personnel on the Property; and,

113 (3) Post "No Trespassing" signs on the Property; and

114 (4) Maintain the Property in accordance with this section, free of overgrowth, trash
115 and debris, and pools of stagnant water, and ensure that structures are maintained in a
116 structurally sound condition; and

117 then required pursuant to this section, signs or markings shall be applied on the front of
118 the Property, and elsewhere as the Commissioner may require, at or above the second floor level

119 and shall not be placed over doors, windows, or other openings. All signs/markings shall be
120 visible from the street and, when requested by the Commissioner, shall be placed on the sides
121 and rear of the Property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with
122 lines of two-inch width, and shall have a reflective background, or be painted with reflective
123 paint, in contrasting colors. Signs/Markings shall be applied directly on the surface of the
124 Property and shall state the date of posting and the most recent date of inspection by the
125 Commissioner.

126 The Commissioner shall have the authority and the duty to inspect properties subject to
127 this section for compliance and to issue citations for any violations. The Commissioner shall
128 have the discretion to determine when and how such inspections are to be made, provided that
129 their policies are reasonably calculated to ensure the enforcement of this section.

130 The Responsible Party of a Vacant, Foreclosing or Foreclosed Property who fails to
131 obtain a Certificate of Compliance as required herein, shall be liable to the City or Town for
132 expenses incurred by the City or Town in securing such Property, and for costs of bringing the
133 property in compliance with this section. The Commissioner shall provide the Responsible Party
134 with a written statement of all costs associated with inspecting, securing and marking the
135 Property, and for costs of bringing the property in compliance with this section. The
136 Commissioner shall record the notice of claim in the appropriate Country Registry of Deeds
137 forthwith, and shall have the right to file a civil action in the Housing Court or District Court
138 with jurisdiction to establish a lien on the Property for the balance due.

139 No Responsible Party for a Vacant, Foreclosing, Foreclosed Property shall allow said
140 Property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain

141 overgrowth, or to have a stagnant pool of water or otherwise not maintain the property in
142 accordance with the Sanitary Code. If it appears that any vacant or foreclosing Property is
143 unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the Commissioner shall
144 send written notification to the Responsible Party, requiring that the Responsible Party promptly
145 secure the Property, remove the rubbish or overgrowth, or abate the stagnant pool of water or
146 other non-compliance with the Sanitary Code.

147 All unsecured Vacant, Foreclosing or Foreclosed Properties shall be immediately referred
148 to the Commissioner for a determination relative to whether the Property is a nuisance or
149 dangerous pursuant to M.G.L. c. 139 and procedures promulgated thereunder.

150 Notices required pursuant to this section shall be served in one of the following manners:

151 (1) Personally on any Responsible Party, or on the contact person specified by such
152 Responsible Party pursuant to this Section; or

153 (2) Left at the last and usual place of abode of any Responsible Party who is an
154 individual; or

155 (3) Sent by certified or registered mail, return receipt requested, to the principal place
156 of business within or without the Commonwealth of any Responsible Party who is an entity, if
157 such principal place of business is known; or,

158 (4) The contact person identified by such Responsible Party pursuant to this Section;
159 or

160 (5) Sent by certified or registered mail, return receipt requested, to any contact person
161 specified by the Responsible Party pursuant to This Section, at the address specified by the
162 Responsible Party pursuant to This Section.

163 Enforcement: violations and penalties. Failure to comply with any provision of this
164 Section shall be punished by a fine of $300 pursuant to M.G.L. c. 40 § 21D, with each day of
165 violation constituting a separate offense.

166 This Section may also be enforced by civil, criminal process or non-criminal process,
167 including injunctive relief. The Commissioner shall be the enforcing person for purposes of this
168 section.

169 Violations of this chapter shall be treated as a strict liability offence regardless of intent.

170 Subsections (b) and (c) of this section shall only take effect in a city or town accepting
171 the provisions of these subsections by a majority vote of the city council with the approval of the
172 mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the
173 city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of
174 the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in
175 the case of a municipality with a town meeting form of government; or by a majority of the town
176 council, in the case of a municipality with a town form of government. The provisions of this
177 section shall take effect on the first day of the first calendar month after the date of such
178 acceptance; if such date is at least 15 days after such acceptance; and provided further, that if
179 such date is less that 15 days after such acceptance, it shall take effect on the first day of the
180 second calendar month following such acceptance.

181 (d) Any city or town which accepts the provisions of this subsection (d) may impose a
182 vacant, foreclosing and foreclosed property refundable cash bond as provided in section (d) of
183 this chapter.

184 Responsible Parties shall provide a refundable cash bond acceptable to the Commissioner
185 to be set by the municipality, in the sum of not to exceed ten thousand ($10,000) dollars, to
186 secure the continued maintenance of the Property until it is no longer vacant, foreclosed or
187 foreclosing and remunerate the City or town for any expenses incurred in inspecting, securing,
188 marking or making safe such Property and, if applicable, the Property in which it is located.

189 The Commissioner shall provide the Responsible Party with a written statement of all
190 costs associated with inspecting, securing and marking the Property, and for costs of bringing the
191 property in compliance with this section. If the Responsible Party fails to pay or reimburse the
192 City or town within seven days of notice of expenses, the City or town shall draw down upon the
193 bond paid by the Responsible Party. If there is no bond available, the Commissioner shall record
194 the notice of claim in the appropriate Country Registry of Deeds forthwith, and shall have the
195 right to file a civil action in the Housing Court or District Court with jurisdiction to establish a
196 lien on the Property for the balance due.

197 If the Responsible Party fails to comply with any order issued pursuant to this Section,
198 the Commissioner may immediately seek to obtain the proceeds secured by the bond filed
199 pursuant to This Section herein and shall enter upon the premises and cause the Property to be
200 inspected, secured and marked, and further may seek court orders to enter upon the premises to
201 secure, clean, and remove any rubbish or overgrowth, or abate any pools of stagnant water or
202 otherwise enforce the sanitary, building codes or local regulations.

Subsection (d) of this section shall only take effect in a city or town accepting the provisions of this subsection by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month after the date of such acceptance; if such date is at least 15 days after such acceptance; and provided further, that if such date is less that 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.

SECTION 2. This act shall take effect upon its passage.