

**HOUSE . . . . . No. 3019**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Frank I. Smizik***

*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 protecting low and moderate income tenants and expiring use housing units.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/20/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	
<i>Bud Williams</i>	<i>11th Hampden</i>	
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	
<i>Daniel Cahill</i>	<i>10th Essex</i>	
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	

<i>David M. Rogers</i>	<i>24th Middlesex</i>	
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	
<i>Michael J. Moran</i>	<i>18th Suffolk</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	
<i>Carlos González</i>	<i>10th Hampden</i>	
<i>Aaron Vega</i>	<i>5th Hampden</i>	
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	
<i>Adrian Madaro</i>	<i>1st Suffolk</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>	
<i>Juana B. Matias</i>	<i>16th Essex</i>	
<i>David M. Nangle</i>	<i>17th Middlesex</i>	

**HOUSE . . . . . No. 3019**

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 3019) of Frank I. Smizik and others relative to low and moderate income tenants and expiring use housing units. Housing.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act protecting low and moderate income tenants and expiring use housing units.

*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, as appearing in the 2014 Official Edition, are hereby  
2 amended by inserting after chapter 40W the following chapter:-

3

4 CHAPTER 40X.

5 PROTECTION OF LOW AND MODERATE INCOME TENANTS AND UNITS OF  
6 GOVERNMENTALLY INVOLVED HOUSING.

7

8 Section 1. The general court finds and declares that: (a) a serious public emergency  
9 continues to exist with respect to the housing of a substantial number of persons in certain areas  
10 of the commonwealth residing in governmentally involved housing, inasmuch that many low-  
11 income individuals and families residing in such housing, particularly those elderly and disabled,

12 may be threatened with displacement as a result of prepayment of mortgage financing, loss of  
13 use or rent restrictions, expiring subsidy contracts, and expected increases in rent, and there is a  
14 threat that affordable housing stock will be lost due to expiration of use or rent restrictions and  
15 such pre-payment, further exacerbating an extreme housing shortage for low-income families  
16 and individuals; (b) it is the commonwealth's policy to encourage owners of this governmentally  
17 involved housing to accept incentives to keep such housing affordable and avert displacement;  
18 (c) such emergency should be met by the commonwealth immediately and with due regard for  
19 the rights and responsibilities of its local communities; therefore, this chapter is declared to be in  
20 the public interest.

21

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

24

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

28

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

30

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

32

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

34

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

37

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

40

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

43

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

49

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

52

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

55

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

57

58 (11) section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended  
59 (42 U.S.C. section8013);

60

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

63

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

66

67 (14) the project-based Massachusetts Rental Voucher Program, so-called (see line item  
68 7004-9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part 49.00)

69

70 For purposes of this section, “governmentally involved housing” shall not include the  
71 following: (1) housing units owned or acquired by the municipality through tax foreclosure; (2)  
72 housing units in a one to ten family building or structure that is not part of a larger housing  
73 development, whether on one or more sites; (3) structures containing housing units subsidized  
74 with mobile tenant-based rental assistance that would not otherwise come within the definition of  
75 governmentally involved housing; (4) structures containing housing units which were subject to  
76 chapter 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the acts of 1970,  
77 chapter 843 of the acts of 1970, chapter 843 of the acts of 1971, chapter 45 of the acts of 1987,  
78 chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which would otherwise  
79 not come within the definition of governmentally involved housing; (5) public housing owned or  
80 operated by a local housing authority under chapter 121B, the United States Housing Act of  
81 1937, or any successor act or public housing programs formerly assisted under the United States  
82 Housing Act of 1937; (6) housing units which first became governmentally involved after  
83 October 1, 2010, unless the municipality enacts a different date; and (7) housing units where the  
84 sole government involvement is the owner's participation in federal, state, or municipal funded  
85 programs for home repairs, energy conservation, or lead paint abatement.

86

87 (B) "Formerly governmentally involved housing", housing which was governmentally  
88 involved as of July 1, 1994, or which became governmentally involved housing after July 1,  
89 1994, but which is no longer governmentally-involved as defined in this section.

90

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

94

95 Section 3. (a) Notwithstanding the provisions of any general or special law to the  
96 contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a  
97 municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy  
98 of governmentally involved or formerly governmentally involved housing to the extent such  
99 regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966,  
100 once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer  
101 exists.(b) Said municipality shall establish as the maximum rent for governmentally involved and  
102 formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six  
103 months before the basis for federal or Massachusetts Housing Finance Agency rent preemption  
104 lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of  
105 the date of the loss of preemption.

106 Section 4. (A) In a municipality accepting the provisions of this chapter, no person shall  
107 bring an action to recover possession of a governmentally involved or formerly governmentally  
108 involved housing unit to the extent that such regulation is not otherwise preempted by federal  
109 law or section 6 of chapter 708 of the acts of 1966, unless: (1) the tenant has failed to pay the  
110 rent to which the owner is entitled; (2) the tenant has violated an obligation or covenant of  
111 tenancy not inconsistent with chapter 93A or this chapter other than the obligation to surrender  
112 possession upon proper notice, and has failed to cure the violation after having received written

113 notice thereof; (3) the tenant is causing, committing or permitting, a nuisance in, or substantial  
114 damage to, the housing unit, or is creating substantial interference with the comfort, safety, or  
115 enjoyment of the owner or other occupants of the same or any adjacent unit; (4) the tenant has  
116 used or permitted use of a housing unit for illegal purposes; (5) the tenant, who had a written  
117 lease or rental agreement which has terminated, has refused, after written requests or demand by  
118 the owner, to execute a written extension or renewal thereof for a further term of like duration on  
119 terms not inconsistent with or violative of any provision of this act; (6) the tenant has refused the  
120 owner reasonable access to the housing unit for the purpose of making necessary repairs or  
121 improvements required by law, or for the purpose of inspection as permitted or required by the  
122 lease or by law, or for the purpose of showing the housing unit to any prospective purchaser or  
123 mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not approved by the  
124 owner; (8) for tenant-based rental assistance programs only, the owner seeks to recover  
125 possession in good faith of a unit for the owner's own use and occupancy or for use and  
126 occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents,  
127 grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9)  
128 the owner seeks to recover possession for any other just cause not in conflict with the provisions  
129 and purposes of this chapter or chapter 93A.

130

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

133

134           Section 5. In a municipality accepting the provisions of this chapter, no person shall  
135 remove any governmentally involved or formerly governmentally involved housing unit from  
136 low-income rental housing use, without first obtaining permission for that purpose from the  
137 municipality or its designee, to the extent that such provision is not preempted by federal law or  
138 section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and  
139 conditions not inconsistent with the purposes and provisions of this chapter, including, without  
140 limitation, incentives to continue in effect the low-income use restrictions previously in place for  
141 the property.

142

143           Section 6. To the extent not preempted by federal law or section 6 of chapter 708 of the  
144 acts of 1966, a municipality accepting the provisions of this chapter shall require an owner of  
145 governmentally involved housing or formerly governmentally involved housing to affirmatively  
146 seek out and accept any prospective government housing resources, whether tenant-based or  
147 project-based, and to convert tenant-based to project-based assistance, in order to maximize the  
148 long term affordability of housing units for low income households consistent with the income  
149 character of the property and the owner's right to obtain a fair net operating income for the  
150 housing units. The appropriate state and municipal agencies shall assist owners by identifying  
151 government housing resources.

152

153           Section 7. To the extent not preempted by federal law or section 6 of chapter 708 of the  
154 acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair  
155 net operating income and the municipality's housing policy, a municipality accepting the

156 provisions of this chapter shall establish local preferences, priorities, and income limits for  
157 admission to governmentally-involved housing or formerly governmentally involved housing  
158 upon unit turnover, consistent, to the extent practicable, with the income profile of the property  
159 twelve months prior to the date of the loss of rent preemption or the decision to not renew an  
160 expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a  
161 tenancy involving any person with a history of conduct which would, if repeated, be grounds for  
162 eviction from such housing.

163

164           Section 8. A municipality accepting the provisions of this chapter may adopt such  
165 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem  
166 necessary or appropriate to effectuate the purposes hereof and may grant exemptions and  
167 exceptions thereto when such action would tend to maintain or increase the supply of affordable  
168 housing in the municipality, including, without limitation, to promote the sale of the property to a  
169 bona-fide tenant organization or non-profit community development corporation under terms and  
170 conditions which would tend to maintain the income character of the property and its long term  
171 affordability for low income people.

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

178

179           Section 10. All decisions of the municipality or its designee may be appealed to the  
180 housing court if available, the district court or the superior court in the jurisdiction or county  
181 where the municipality is located by any person aggrieved thereby, whether or not previously a  
182 party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial  
183 review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter  
184 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter  
185 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of  
186 this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on  
187 application of the municipality or its designee or any aggrieved person may restrain or enjoin  
188 violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court  
189 may allow any necessary parties to be joined in or to intervene in any action brought hereunder  
190 and may in its discretion allow or require an action to proceed as a class action.

191

192           Section 11. It shall be unlawful for any person to do or omit to do any action in violation  
193 of this chapter or any order, ordinance, by-law, rule or regulation adopted or promulgated under  
194 this chapter. Whoever willfully violates any provision of this chapter or any order, ordinance, by-  
195 law, rule or regulation adopted or promulgated under this chapter or whoever makes a false  
196 statement in any testimony before the municipality or its designee, or whoever knowingly  
197 supplies the municipality or its designee with false information, in connection with a proceeding  
198 under this chapter, shall be punished by a fine of not more than \$400 or by imprisonment for not  
199 more than 90 days, or both. In the case of a second or subsequent offense, or where the violation

200 continues after notice thereof, such person shall be punished by a fine of not more than \$2,000,  
201 or imprisonment for not more than one year, or both.

202

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

205

206 Section 13. The provisions of Chapter 40P shall not apply to any ordinance adopted  
207 under this enabling authority.

208

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