

**HOUSE . . . . . No. 3541**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Byron Rushing***

*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 restore Boston's governmentally-involved housing protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>

**HOUSE . . . . . No. 3541**

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 3541) of Byron Rushing and others (with the approval of the mayor and city council) that the city of Boston be authorized to regulate rent for the use or occupancy of certain governmentally-involved housing in said city. Housing. [Local Approval Received.]

**The Commonwealth of Massachusetts**

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

An Act to restore Boston's governmentally-involved housing protection.

*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. Whereas, a serious public emergency exists with respect to the housing of  
2 citizens in Boston residing in governmentally-involved housing, inasmuch as there is a threat that  
3 many low-income individuals and families residing in such housing, particularly those elderly  
4 and disabled, may be threatened with displacement as a result of prepayment of mortgage  
5 financing, loss of use restrictions, expiring subsidy contracts, and expected increases in rent, and  
6 there is a threat that affordable housing stock will be lost due to expiration of use restrictions and  
7 subsidy contracts and such pre-payment, further exacerbating an extreme housing shortage  
8 within the city for low-income families and voters, and whereas , in approving Chapter 40 P of  
9 the General Laws, the voters did not exempt such housing from protection or regulation and  
10 whereas it is the city’s policy to encourage owners of this governmentally—involved housing to  
11 accept incentives to keep such housing affordable and avert displacement, that such emergency

12 should be met by the city of Boston immediately; therefore, this act is declared to be in the  
13 public interest.

14 SECTION 2. (A) Notwithstanding the provisions of any general or special law to the  
15 contrary, including, without limitation, the provisions of chapter forty P of the General Laws and  
16 chapter 282 of the Acts of nineteen hundred and ninety-four, for so long as the City Council of  
17 Boston shall determine that the circumstances described in section one hereof continue to exist,  
18 the City of Boston shall by ordinance regulate the rent for the use or occupancy of  
19 governmentally-involved or formerly governmentally-involved housing to the extent such  
20 regulation is not preempted by federal law or by section six of chapter 708 of the Acts of  
21 nineteen hundred and sixty-six as amended, once the basis for federal or state rent regulation or  
22 preemption no longer exists. For purposes of this act, “governmentally-involved housing” is  
23 defined as housing units which the United States, the Commonwealth or any authority created  
24 under the laws thereof (i) insures the mortgage thereon, or owns, operates, finances, or subsidizes  
25 such housing units, and (ii) regulates the individual rents thereof, including without limitation  
26 housing units constructed or rehabilitated pursuant to Section 202 of the Housing Act of 1959, as  
27 amended (12 U.S.C. § 1701q), Sections 221 (d) and 236 of the National Housing Act, as  
28 amended (12 U.S.C. § § 17151(d) or 1715z-1), Section 811 of the Cranston-Gonzalez National  
29 Affordable Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of chapter 708 of the  
30 Acts of nineteen hundred and sixty-six, added by Section 10 of chapter 855 of the Acts of  
31 nineteen hundred and seventy, as amended (M.G.L. c. 23A App. §1-13A), or housing units  
32 financed or subsidized pursuant to project-based programs for low-income persons under Section  
33 8 of the United States Housing Act of 1937, as amended (42 U.S.C. § 1437f), or the project-  
34 based Massachusetts Rental Voucher Program, so-called (see line item 7004-9004 of Section 2

35 of chapter 159 of the Acts of two thousand, as well as 760 C.M.R. Part 49.00), or housing units  
36 with mortgage insurance under Sections 207 or 220 of the National Housing Act, as amended,  
37 and subject to a rent regulatory agreement or other controls pursuant to applicable law with the  
38 Boston Redevelopment Authority, but not including the following:

39 (1) housing units owned or acquired by the City of Boston through tax foreclosure;

40 (2) except for publicly owned dwelling units or units which are financed or  
41 subsidized with project-based Section 8, housing units in a one-to-four family building or  
42 structure which are not part of a larger housing development, whether on one or more sites;

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

46 (4) public housing owned or operated by a local housing authority under chapter  
47 121B of the General Laws, the United States Housing Act of 1937 (42 U.S.C. § § 1457a et seq.),  
48 or any successor act or public housing programs formerly assisted under the United States  
49 Housing Act of 1937;

50 (5) housing units which received mortgage insurance pursuant to sections 207 or 220  
51 of the National Housing Act but not subject to a rent regulatory agreement or other controls with  
52 the Boston Redevelopment Authority as well as housing units which received mortgage  
53 insurance pursuant to section 608 of the National Housing Act, regardless of whether there was a  
54 rent regulatory agreement or other controls with the Boston Redevelopment Authority or not;

55           (6)     housing units which received mortgage insurance pursuant to Section 221(d) of  
56 the National Housing Act and which never received a federal or state subsidy or below market  
57 interest rate mortgage subsidy; and

58           (7)     housing units where the sole government involvement is the owner's participation  
59 in federal, state, or municipal funded programs for home repairs, energy conservation, or lead  
60 paint abatement.

61           For the purpose of this act, "formerly governmentally-involved housing" is defined as  
62 housing which was governmentally-involved housing as of July 1, 1994, or which becomes  
63 governmentally involved housing after July 1, 1994, but which then no longer is owned,  
64 operated, financed, subsidized, mortgage-insured, or rent-regulated by the United States, the  
65 Commonwealth, or any authority created under the laws thereof, provided that "formerly  
66 governmentally involved housing" shall include any housing receiving subsidy under Section  
67 8(t) of the United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

68           For the purpose of this act, "low-income" is defined as annual household income which is  
69 eighty per cent or less of the median income for the area as determined by the United States  
70 Department of Housing and Urban Development, with adjustments for smaller and larger  
71 families.

72           The City of Boston shall by ordinance create a official body designated by the Mayor to  
73 establish as the maximum rent for the governmentally-involved and formerly governmentally-  
74 involved housing units the rent in effect therefore on July 1, 1994, or six months before the basis  
75 federal or state rent regulation or preemption lapsed, whichever is later, adjusted to insure such  
76 rent provides a fair net operating income as of the date of the official body's decision, provided,

77 however, said ordinance shall authorize the official body to make individual adjustments in such  
78 maximum rents as may be necessary to remove hardships or to correct other inequities, the  
79 official body shall observe the principle of maintaining maximum rents for such housing units at  
80 levels which will yield to owners a fair net operating income from such housing units. In  
81 determining whether the maximum rent for such housing units yields a fair net operating income,  
82 due consideration shall be given to, among other relevant factors; (1) increases in property taxes;  
83 (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement  
84 of the housing units, distinguished from ordinary repair, replacement, and maintenance; (4)  
85 increases or decreases in living space, services, furniture, furnishings or equipment; and (5)  
86 substantial deterioration of the housing units, other than ordinary wear and tear, or failure to  
87 perform ordinary repair, replacement, or maintenance.

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

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

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

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

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

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

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

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

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

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

115           (C)     Such ordinance shall also provide that no person shall remove any  
116     governmentally-involved or formally governmentally-involved housing accommodation from  
117     low-income rental housing use (including but not limited to sale, lease, or other disposition of the

118 property which may have such an effect), or convert such property to a condominium or  
119 cooperative, without first obtaining a permit for that purpose from the official body, to the extent  
120 that such provision is not preempted by federal law or section six of chapter 708 of the acts of  
121 nineteen hundred and sixty-six as amended. Such permit may be subject to terms and conditions  
122 not inconsistent with the purposes and provisions of this act, including, without limitation, (a)  
123 incentives to continue in effect the low-income restrictions previously in place for the property  
124 and (b) where sale, lease, or disposition of the property may result in the loss of all or a portion  
125 of the property for low-income rental housing use, the right of an incorporated tenants  
126 association in such housing, the city of Boston, the Boston Housing Authority, non-profit  
127 community development corporations, or other equivalent bona fide non-profit organizations to  
128 negotiate for, acquire and operate such property on substantially equivalent terms and conditions  
129 as offered or available to a bona fide third-party purchaser.

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

138 (E) To the extent not preempted by federal law or section six of chapter 708 of the  
139 acts of nineteen hundred and sixty-six as amended, and so long as such regulation is consistent  
140 with the owner's right to obtain a fair net operating income, such ordinance shall also provide



141 that the City may establish local preferences, priorities, and income limits for admission to  
142 governmentally-involved housing or former governmentally-involved housing upon unit  
143 turnover, consistent, to the extent with the income profile of the property twelve months prior to  
144 the date of the loss or rent preemption or the decision to not renew an expiring subsidy contract.  
145 The official body may approve an alternative plan requested by the owner, consistent with the  
146 provisions of this Act. No ordinance or regulation shall require an owner to create a tenancy  
147 involving any person with a history of conduct which would, if repeated, be grounds for eviction  
148 from such housing.

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

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

164 (H) All decisions of the crucial body may be appealed to the housing court department  
165 of the trial court, city of Boston division, by any person aggrieved thereby, whether or not  
166 previously a party in the matter, within thirty calendar days after notice of such decision. Judicial  
167 review of adjudicatory decisions shall be conducted in accordance with section fourteen of  
168 chapter thirty A to the General Laws. Judicial review of regulations shall be conducted in  
169 accordance with section seven of chapter thirty A of the General Laws. The housing court  
170 department of the trial court, city of Boston division, shall have jurisdiction to enforce the  
171 provisions hereof and any ordinance, rule or regulation adopted hereunder, and on application of  
172 the official body or any aggrieved person may restrain or enjoin violations of any such  
173 ordinance, rule, or regulation. In the interests of justice, the court may allow any necessary  
174 parties to be joined in or to intervene in any action brought hereunder and may in its discretion  
175 allow or require an action to proceed as a class action.

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

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

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

191           SECTION 6. This act shall take effect upon passage