

HOUSE No.

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F.D. Cabral

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 passage of the accompanying bill:

An Act to adopt protections for New Bedford's governmentally involved housing stock.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol
Robert M. Koczera	11th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4051 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

**AN ACT TO ADOPT PROTECTIONS FOR NEW BEDFORD'S GOVERNMENTALLY INVOLVED
HOUSING STOCK.**

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

1 WHEREAS, the City of New Bedford desires to adopt protections for
2 governmentally involved housing;

3

4 WHEREAS, the City of New Bedford is petitioning the General Court for passage
5 of legislation authorizing such a change;

6

7 WHEREAS, a majority vote of approval by the New Bedford City Council is
8 required for the filing of such petition;

9

10 NOW THEREFORE, be it voted by the city council of the city OF New Bedford, as
11 follows:

12

13 Ordered: That a petition to the General Court, accompanied by a bill for a
14 special law relating to the city of New Bedford to be filed with an attested
15 copy of this order be, and hereby is, approved under Clause (1) of Section 8
16 of Article 2, as amended, of the Amendments to the Constitution of the
17 Commonwealth of Massachusetts, to the end that legislation be adopted
18 precisely as follows, except for clerical or editorial changes of form only:

19

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

22

23 SECTION 1. Whereas, a serious public emergency exists with respect to the
24 housing of citizens in New Bedford residing in governmentally-involved
25 housing, in as much as there is a threat that many low-income individuals and
26 families residing in such housing, particularly those elderly and disabled,
27 may be threatened with displacement as a result of prepayment of mortgage
28 financing, loss of use restrictions, expiring subsidy contracts, and expected
29 increases in rent, and there is a threat that affordable housing stock will
30 be lost due to expiration of use restrictions and subsidy contracts and such
31 pre-payment, further exacerbating an extreme housing shortage within the city
32 for low-income families and voters, and whereas, in approving Chapter 40 P of
33 the General Laws, the voters did not exempt such housing from protection or
34 regulation and whereas it is the city's policy to encourage owners of this
35 governmentally-involved housing to accept incentives to keep such housing
36 affordable and avert displacement, that such emergency should be met by the
37 city of New Bedford immediately; therefore, this act is declared to be in the
38 public interest.

39

40 SECTION 2. (A) Notwithstanding the provisions of any general or special law
41 to the contrary, including, without limitation, the provisions of chapter
42 forty P of the General Laws and chapter 282 of the Acts of nineteen hundred
43 and ninety-four, for so long as the City Council of New Bedford shall
44 determine that the circumstances described in section one hereof continue to
45 exist, the City of New Bedford shall by ordinance regulate the rent for use
46 or occupancy of governmentally-involved or formerly governmentally-involved
47 housing to the extent such regulation is not preempted by federal law or by
48 section six of chapter 708 of the Acts of nineteen hundred and sixty-six as
49 amended, once the basis for federal or state rent regulation or preemption no
50 longer exists, except that market units in projects formerly assisted under
51 sections 25 through 27 of chapter 23 (a) of the General Laws shall not be
52 deemed to be regulated by the state for purposes of this act. For purposes of
53 this act, "governmentally-involved housing" is defined as housing units which
54 the United States, the Commonwealth or any authority created under the laws
55 thereof (i) insures the mortgage thereon, or owns, operates, finances, or
56 subsidizes such housing units, and (ii) regulates the individual rents
57 thereof, including without limitation housing units constructed or
58 rehabilitated pursuant to Section 202 of the Housing Act of 1959, as amended
59 (12 U.S.C. § 1701q), Sections 221(d) and 236 of the National Housing Act, as
60 amended (12 U.S.C. §§ 1715l(d) or 1715z-1), Section 811 of the Cranston-
61 Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 8013), or
62 Section 13A of chapter 708 of the Acts of nineteen hundred and sixty-six,
63 added by Section 10 of chapter 855 of the Acts of nineteen hundred and
64 seventy, as amended (M.G.L. c. 23A App. § 1-13A), or housing units financed

65 or subsidized pursuant to project-based programs for low-income persons under
66 Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. §
67 1437f) or the project-based Massachusetts Rental Voucher Program, so-called
68 (see line item 7004-9004 of Section 2 of chapter 159 of the Acts of two
69 thousand, as well as 760 C.M.R. Part 49.00), but not including the
70 following:-

71

72 (1) housing units owned or acquired by the City of New Bedford through tax
73 foreclosure;

74

75 (2) housing units in a building or structure of fewer than twenty-five units
76 which are not part of a larger housing development, whether on one or more
77 sites;

78

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

82

83 (4) public housing owned or operated by the New Bedford Housing Authority
84 under chapter 121Bf of the General Laws, the United States Housing Act of
85 1937 (42 U.S.C. §§ 1437a et seq.), or any successor act or public housing
86 programs formerly assisted under the United States Housing Act of 1937;

87

88 (5) housing units where the sole government involvement is the owner's
89 participation in federal, state, or municipal funded programs for home
90 repairs, energy conservation, or lead paint abatement.

91

92 (6) housing units which become governmentally involved after January 1, 2002;
93 For the purpose of this act, "formerly governmentally-involved housing" is
94 defined as housing which was governmentally-involved housing as of July 1,
95 1996 or which becomes governmentally-involved housing after July 1, 1996 but
96 which then no longer is owned, operated, financed, subsidized, mortgage-
97 insured, or rent-regulated by the United States, the Commonwealth, or any
98 authority created under the laws thereof, provided that "formerly
99 governmentally involved housing" shall include any housing receiving subsidy
100 under Section 8(t) of the United States Housing Act of 1937 (42 U.S.C. §
101 1437f(t)).

102

103 For the purpose of this act, "low-income" is defined as annual household
104 income which is eighty percent or less of the median income for the area as
105 determined by the United States Department of Housing and Urban Development,
106 with adjustments for smaller and larger families.

107

108 The City of New Bedford shall by ordinance create an official body to
109 establish as the maximum rent for the governmentally-involved and formerly
110 governmentally-involved housing units the rent in effect therefore on July 1,
111 1996 or six months before the basis for federal or state rent regulation or
112 preemption lapsed, whichever is later, adjusted to insure such rent provides
113 a fair net operating income as of the date of the official body's decision,
114 provided, however, said ordinance shall authorize the official body to make
115 individual adjustments in such maximum rents as may be necessary to remove
116 hardships or to correct other inequities.

117

118 In making individual adjustments to remove hardships or to correct other
119 inequities, the official body shall observe the principle of maintaining
120 maximum rents for such housing units at levels which will yield to owners a
121 fair net operating income from such housing units. In determining whether the
122 maximum rent for such housing units yields a fair net operating income, due
123 consideration shall be given to, among other relevant factors: (1) increases
124 in property taxes; (2) unavoidable increases in operating and maintenance
125 expenses; (3) major capital improvement of the housing units, distinguished
126 from ordinary repair, replacement, and maintenance; (4) increases or
127 decreases in living space, services, furniture, furnishings or equipment; and
128 (5) substantial deterioration of the housing units, other than ordinary wear
129 and tear, or failure to perform ordinary repair, replacement, or maintenance.

130

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

136

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

138

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

143

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

148

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

151

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

157

158 (6) the tenant has refused the owner reasonable access to the housing unit
159 for the purpose of making necessary repairs or improvements required by law,
160 or for the purpose of inspection as permitted or required by the lease or
161 law, or for the purpose of showing the housing unit to any prospective
162 purchaser or mortgagee;

163

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

166

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

170

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

173

174 (C) Such ordinance shall also provide that no person shall remove any
175 governmentally-involved or formerly governmentally-involved housing
176 accommodation from low-income rental housing use (including but not limited
177 to sale, lease, or other disposition of the property which may have such an
178 effect), or convert such property to a condominium or cooperative, without
179 first obtaining a permit for that purpose from the official body, to the
180 extent that such provision is not preempted by federal law or section six of
181 chapter 708 of the acts of nineteen hundred and sixty-six as amended. Such
182 permit may be subject to terms and conditions not inconsistent with the

183 purposes and provisions of this act, including, without limitation, (a)
184 incentives to continue in effect the low-income restrictions previously in
185 place for the property and (b) where sale, lease, or disposition of the
186 property may result in the loss of all or a portion of the property for low-
187 income rental housing use, the right of an incorporated tenants association
188 in such housing, the city of New Bedford, the New Bedford Housing Authority,
189 or non-profit community development corporations to negotiate for, acquire
190 and operate such property on substantially equivalent terms and conditions as
191 offered or available to a bona fide third-party purchaser.

192

193 (D) To the extent not preempted by federal law or section six of chapter 708
194 of the acts of nineteen hundred and sixty-six as amended, such ordinance
195 shall require that owners of governmentally-involved housing, or formerly
196 governmentally involved housing, affirmatively seek out and accept any
197 prospective governmental housing resources, whether tenant-based or project-
198 based, which maximize affordability of the housing units consistent with the
199 income character of the property and the owner's right to obtain a fair net
200 operating income for the housing units, provided that the City shall assist
201 owners by identifying such governmental housing resources.

202

203 (E) To the extent not preempted by federal law or section six of chapter 708
204 of the acts of nineteen hundred and sixty-six as amended, and so long as such
205 regulation is consistent with the owner's right to obtain a fair net
206 operating income, such ordinance shall also provide that the City may
207 establish local preferences, priorities, and income limits for admission to
208 governmentally-involved housing or formerly governmentally-involved housing
209 upon unit turnover, consistent, to the extent practicable, with the income
210 profile of the property twelve months prior to the date of the loss of rent
211 preemption or the decision to not renew an expiring subsidy contract. The
212 official body may approve an alternate plan requested by the owner,
213 consistent with the provisions of this act. No ordinance or regulation shall
214 require an owner to create a tenancy involving any person with a history of
215 conduct which would, if repeated, be grounds for eviction from such housing.

216

217 (F) Such ordinance shall also provide that the official body may grant
218 exemptions and exceptions to the general provisions of this act when such
219 action would tend to maintain or increase the supply of affordable housing in
220 New Bedford, including, without limitation, promoting the sale of properties
221 to bona fide tenant organizations or non-profit community development
222 corporations under terms and conditions which would tend to maintain the
223 income character of the property.

224

225 (G) Such ordinance shall provide that the official body may promulgate such
226 rules, regulations and orders as it may deem necessary to effectuate the
227 purposes of this act and the ordinance. The board may hold hearings on any
228 matters within its authority under this act and ordinance. Any hearings
229 regarding matters related to regulation of rents or removal permits for
230 governmentally involved or formerly governmentally involved housing or
231 regarding compliance with other provisions of this act, or the ordinance,
232 orders, rules, or regulations adopted or promulgated hereunder, shall be
233 conducted by the official body in accordance with the provisions of section
234 eleven of chapter thirty A of the General Laws except that requirements (7)
235 and (8) of such section eleven shall not apply to such hearings.

236

237 (H) All decisions of the official body may be appealed to the housing court
238 department of the trial court, Southeast Division, by any person aggrieved
239 thereby, whether or not previously a party in the matter, within thirty
240 calendar days after notice of such decision. Judicial review of adjudicatory
241 decisions shall be conducted in accordance with section fourteen of chapter
242 thirty A of the General Laws. Judicial review of regulations shall be
243 conducted in accordance with section seven of chapter thirty A of the General
244 Laws. The housing court department of the trial court, Southeast Division,
245 shall have jurisdiction to enforce the provisions hereof and any ordinance,
246 rule or regulation adopted hereunder, and on application of the board or any
247 aggrieved person may restrain or enjoin violations of any such ordinance,
248 rule, or regulation. In the interests of justice, the court may allow any
249 necessary parties to be joined in or to intervene in any action brought
250 hereunder and may in its discretion allow or require an action to proceed as
251 a class action.

252

253 SECTION 3. It shall be unlawful for any person to do or omit to do any action
254 in violation of this act, or any order, ordinance, rule or regulation adopted
255 or promulgated hereunder. Whoever willfully violates any provision of this
256 act or any order, ordinance, rule or regulation adopted or promulgated
257 hereunder or whoever makes a false statement in any testimony before the
258 board or its agents, or whoever knowingly supplies the official body with
259 false information shall be punished by a fine of not more than four hundred
260 dollars or by imprisonment for not more than ninety days, or both; provided,
261 however, that in the case of a second or subsequent offense, or where the
262 violation continues after notice thereof, such person shall be punished by a
263 fine of not more than two thousand dollars, or by imprisonment for not more
264 than one year, or both.

265

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

270

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

273

274 SECTION 6. This act shall take effect upon passage.

275

276

277