

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Tucker

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 Preserving Publicly Assisted Affordable Housing.

PETITION OF:

NAME:

Martha M. Walz

DISTRICT/ADDRESS:

8th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PRESERVING PUBLICLY ASSISTED AFFORDABLE HOUSING.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to preserve publicly assisted affordable housing for certain low-income residents, 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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40S the following
2 chapter:

3 CHAPTER 40T

4 PUBLICLY-ASSISTED AFFORDABLE HOUSING.

5 Section 1. As used in this chapter, the following words shall have the following meanings unless
6 the context clearly requires otherwise:

7 "Affected municipality", any city or town in which publicly-assisted housing, or a publicly-
8 assisted housing development, is located.

9 "Affiliate", an entity owned or controlled by an owner.

10 "Affordability restriction", a limit on rents that an owner may charge for occupancy of a rental
11 unit in a publicly assisted housing development or a limit on tenant income for persons or families
12 seeking to qualify for admission to such housing.

13 "CEDAC", the Community Economic Development Assistance Corporation established in chapter
14 40H.

15 “Chief executive officer”, the mayor in a city and the board of selectmen in a town unless
16 otherwise is designated by a municipal charter.

17 “Department”, the department of housing and community development or, when applicable, its
18 designee, or any successor agency of the department.

19 “Designee”, a municipality, local or regional housing authority, nonprofit or for-profit
20 corporation or other entity qualified to do business in the commonwealth and, which is selected by the
21 department to operate publicly-assisted housing that is decent, safe and sanitary affordable housing,
22 under subsection (b) of section 3.

23 “Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t) or other
24 substantially equivalent assistance.

25 “Extremely low income”, a household income of not more than 30 per cent of the area median
26 income, adjusted for household size, as periodically determined by the United States Department of
27 Housing and Urban Development.

28 “Government program”, a program which provides government assistance under a program set
29 forth in the definition of publicly-assisted housing.

30 “Low income”, a household income of not more than 80 per cent of the area median income,
31 adjusted for household size, as periodically determined by the United States Department of Housing and
32 Urban Development.

33 “Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company
34 or other entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

35 “Prepayment”, (i) the payment in full or the refinancing of a governmental-insured or
36 government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary
37 cancellation of mortgage insurance on a publicly assisted housing development; or (iii) the payment in
38 full on a government contract, any of which would have the effect of removing either: (i) the
39 affordability restrictions applicable to the publicly-assisted housing development; or (ii) a requirement
40 to renew any such affordability restrictions.

41 “Preserve affordability”, with respect to a publicly-assisted housing development, to undertake
42 reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing
43 development in order to maintain at least the same number of units affordable to low, very low and
44 extremely low-income households, respectively, as are currently occupied by such households, and to
45 maintain as affordable to such households generally all units that are currently vacant, to the extent of
46 available subsidies and taking into account the need to ensure that the development provides quality
47 housing to its tenants.

48 “Protected low-income tenant”, a low-income tenant residing in a publicly-assisted housing
49 development on the date of termination of the government program and whose rent was restricted by
50 that government program.

51 “Publicly-assisted housing”, a housing unit or development that receives government assistance
52 under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42 U.S.C.
53 section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,
54 property disposition and loan management set-aside programs or any other program providing project-
55 based rental assistance; (ii) section 42 of the Internal Revenue Code and 26 U.S.C. section 42, the federal
56 Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act of
57 1965 and 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;
58 (iv) section 202 of the Housing Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the
59 National Housing Act 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)
60 section 221(d)(4) of the National Housing Act 12 U.S.C. section 1715l (d)(4) to the extent the project’s
61 rents are restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act
62 and 12 U.S.C. section 1715z-l; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section 1485;
63 (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban Development
64 Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to
65 such program are restricted pursuant to a government agreement; (xi) the Housing Development Action
66 Grant, and 42 U.S.C. section 1437o to the extent the project’s rents are restricted pursuant to a
67 government agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program
68 provided for annually in item 7004-9024 of section 2 of the general appropriation act as that program
69 applies to project-based rental assistance; (xiv) the Massachusetts low income housing tax credit
70 program established in section 6l of chapter 62; (xv) the State Housing Assistance for Rental Production,
71 chapter established in 574 of the acts of 1983; and (xvi) chapter 121A to the extent that the affordability
72 of dwelling units are restricted pursuant to a written agreement with the affected municipality.

73 “Purchase contract”, a document that purports to sell a publicly-assisted housing development
74 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other
75 similar instrument.

76 “Regulatory agreement”, an affordable housing restriction that establishes an owner's
77 obligations created pursuant to the efforts of the department or its designee to preserve affordability
78 and which is consistent with section 31 of chapter 184 provided that in any project that is eligible for
79 participation in the HUD mark up to market program, the restriction, insofar as it relates to the limiting
80 of the level of rents, shall not apply to units covered by a section 8 housing assistance payment contract
81 so long as such contract is effective.

82 “Sale”, the execution of a written agreement pursuant to which the owner or the holders of an
83 ownership interest in the owner of the publicly assisted housing agrees to the disposition of the
84 property by deed or otherwise, whether through a single transaction or a series of transactions, except
85 for a disposition of such housing to an affiliate of the owner.

86 “Subsidy”, public financial assistance including, but not limited to, grants, loans, rental
87 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to
88 any government program or any other form of assistance, intended to make housing affordable to low-
89 income households, especially very low and extremely low-income households.

90 “Tenant”, a person legally entitled to possession or occupancy of a rental unit within publicly-
91 assisted housing, including a subtenant, lessee and sublessee.

92 “Tenant organization”, an organization established by the tenants of a publicly-assisted housing
93 development for the purpose of addressing issues related to their living environment and which meets
94 regularly, operates democratically, is representative of all residents in the development, is completely
95 independent of owners, management and their representatives and which has filed a notice of its
96 existence with CEDAC; provided, however, that, no owner or other third party shall be required to
97 ascertain the organization’s compliance with this definition.

98 “Termination”, the cessation, discharge or removal of an affordability restriction affecting a
99 publicly-assisted housing development in the absence of a simultaneous replacement of that restriction
100 with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in
101 whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of
102 an affordability restriction under a government program or the requirement to renew the restriction;
103 (iii) payment in full of a government program mortgage; or (iv) prepayment of a government program
104 mortgage or contract.

105 “Time for performance”, the date for delivery of the deed or other document evidencing a sale
106 pursuant to a purchase contract or any extension thereof.

107 “Very low income”, having a household income of not more than 60 percent of the area median
108 income, adjusted for household size, as periodically determined by the United States Department of
109 Housing and Urban Development.

110 Section 2. (a) Except with respect to property subject to an affordability restriction which has
111 less than 2 years remaining and, for which subsection (e) shall, apply, the owner shall provide written
112 notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected
113 municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the
114 affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from
115 taking actions to terminate an affordability restriction during any notice period provided herein;
116 provided, however, that the owner shall comply with all of the notice terms and restrictions pursuant to
117 subsections (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted
118 housing; (2) the name and address of the owner; (3) notification that an affordability restriction may
119 terminate; (4) the date on which each affordability restriction may terminate; and (5) such other
120 information as required by the department. Where more than 1 termination may occur, the owner may
121 send 1 written notice so long as the terminations are scheduled to occur within 1 year of each other, the
122 notice is given at least 24 months before the earliest termination and the notice otherwise complies
123 with this subsection.

124 (b) An owner shall not complete a termination or allow a termination to occur unless, not less
125 than 1 year before the completion of the last termination event affecting the housing, the owner
126 provides the entities identified in subsection (a) with written notice of intent to complete termination.
127 The notice shall state: (1) the address of the publicly-assisted housing; (2) the name and address of the
128 owner; (3) the date on which the owner intends to complete termination; (4) unless section 6 applies, a
129 statement that the department has the right of offer pursuant to section 3; and (5) such other
130 information as required by the department.

131 (c) An owner shall not sell publicly-assisted housing before offering the department the
132 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing,
133 the parties identified in subsection (a) of the owner's intention to potentially sell the property.

134 (d) A notice required by this chapter shall be deemed given when delivered in person or mailed
135 by certified or registered mail, return receipt requested, to the party to whom notice is required. A
136 notice to the affected municipality shall be awarded to the chief executive officer.

137 (e) The notice requirements of this section shall not be affected by the status of an offer,
138 purchase contract or sale under section 3 or section 4.

139 Section 3. (a) An owner shall offer the department an opportunity to purchase the property
140 prior to entering into an agreement to sell the property pursuant to the time periods contained in this
141 section, but no owner shall be under any obligation to enter into an agreement to sell such property to
142 the department.

143 (b) The department may select a designee to act on its behalf as purchaser of the publicly-
144 assisted housing and shall give the owner and CEDAC written notice of its selection. The department
145 shall promptly consult with the affected municipality before selecting a designee and shall immediately
146 designate the affected municipality as its designee upon written request of the affected municipality,
147 unless the department determines that such request is not feasible for reasons set forth in the
148 department's regulations. The department shall enter into a written agreement with its selected
149 designee providing that the designee and any of its successors or assigns, agree to preserve the
150 affordability of the publicly assisted housing. Once such an agreement is executed, the designee shall
151 assume all rights and responsibilities attributable to the department as a prospective purchaser under
152 this section and section 4. At any time prior to a sale under section 3 or section 4, the department may
153 revoke its designation and assume the designee's rights and responsibilities, either in its own capacity or
154 by selecting a new designee; provided, however, that no change in a designation shall operate to extend
155 or alter any time periods for performance set forth in this chapter or in any purchase contract entered
156 into pursuant to this chapter.

157 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of the
158 owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure
159 by the department to submit a timely offer shall constitute an irrevocable waiver of the department's
160 rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the
161 owner accepts the department's initial or any revised offer, the owner and the department shall enter

162 into such other agreements as are necessary and appropriate to complete the sale. If the owner and the
163 department have not entered into an agreement to sell the property to the department within 90 days
164 after receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an
165 agreement to sell the property to a purchaser of the owner's choice, subject to the department's right
166 of first refusal pursuant to section 4.

167 (d) At any time after the notice in section 2 has been provided and within 10 days of receiving a
168 request, the owner shall make documents available to the department for review and photocopying
169 during normal business hours at the owner's principal place of business or at a commercial
170 photocopying facility. Such documents shall include, but not limited to: (1) any existing architectural
171 plans and specifications of the development; (2) itemized lists of monthly operating expenses and
172 capital expenditures in each of the 2 preceding calendar years; (3) any capital needs studies or market
173 studies that have been submitted to a federal, state, or local agency in the preceding 3 years; (4) utility
174 consumption rates for the preceding 12 months; (5) copies of the last 2 annual financial and physical
175 inspection reports filed with federal, state or local agencies; (6) the most recent rent roll showing then
176 current vacancies and rent arrearages; (7) a list of vacant units; and (8) a statement of the approximate
177 annualized vacancy rate at the development for each of the 2 preceding calendar years. Documents
178 obtained pursuant to a request under this subsection shall not be considered public records, as defined
179 in clause Twenty-sixth of section 7 of chapter 4, and the department shall not make such documents
180 available to the public without the written consent of the owner or pursuant to a court order, provided,
181 however, that disclosure may be made to potential funding sources, regulatory agencies or agents or
182 consultants of the department in connection with the transaction, subject to appropriate confidentiality
183 agreements. Upon request and with appropriate notice, the owner shall also permit reasonable
184 inspections of the dwelling units, building systems, common areas, and common grounds by agents,
185 consultants and representatives of the department including, but not limited to, inspections related to
186 environmental, engineering, structural or zoning matters.

187 (e) Not later than 30 days after the department submits an offer to purchase the publicly-assisted
188 housing development pursuant to subsection (c), the department shall notify tenants in the housing
189 development and shall meet with them at least once to discuss the department's plans.

190 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted
191 housing development under this section. At any time after the 90 days the department has been given
192 notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such
193 notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted
194 housing development provided that the owner complies with this section. Thereafter, the owner again
195 shall be subject to the notice provision of subsection (c) of section (2).

196 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a
197 copy of the contract to the department and CEDAC, along with a proposed purchase contract for
198 execution by the department. The department shall, within 30 days after receipt of the third party
199 purchase contract and the proposed purchase contract, execute the proposed purchase contract or such
200 other agreement as is acceptable to the owner and the department. The time periods set forth in this

201 subsection may be extended by agreement between the owner and the department. The proposed
202 purchase contract shall contain the same terms and conditions as the executed third party purchase
203 contract, except that the proposed purchase contract shall provide at least the following terms: (i) the
204 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase
205 contract; (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money
206 deposit shall be held under commercially-reasonable terms by an escrow agent selected jointly by the
207 owner and the department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails
208 to perform its obligations with due diligence for a period of not less than 90 days from the date of
209 execution of the purchase contract or such greater period as provided for in the third party purchase
210 contract; and (iii) the time for performance shall be not less than 240 days from the date of the
211 execution of the purchase contract, or such greater period as provided for in the third party purchase
212 contract.

213 (c) If the department fails to execute the proposed purchase contract within 30 days or such
214 other period as provided in subsection (b), the owner shall have 24 months from the last day on which
215 the department was entitled to execute the proposed purchase contract in which to complete the sale
216 of the owner's publicly-assisted housing development to a third party, except as provided in subsection
217 (e). Upon the expiration of the 24-month period, the owner shall be subject again to all of subsection (c)
218 of section 2, section 3 and this section.

219 (d) If the department executes the proposed purchase contract as provided in subsection (b)
220 but fails to perform as provided in the executed purchase contract, then the owner shall have 2 years
221 from the date on which the proposed purchase contract terminated in which to complete the sale of the
222 owner's publicly-assisted housing development to a third party on economic terms and conditions that
223 are not materially more favorable to the proposed purchaser than the economic terms and conditions in
224 the proposed purchase contract offered to the department. Upon the expiration of the 24-month
225 period, the owner shall be subject to subsection (c) of section 2, section 3 and this section.

226 (e) The department may make a counter offer by executing and submitting to the owner an
227 amended proposed purchase contract. The owner shall have 30 days from the date it receives the
228 amended proposed purchase contract to execute the amended proposed purchase contract or reject, in
229 writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date
230 on which the owner rejects the department's counter offer to complete the sale of the owner's publicly-
231 assisted housing development to a third party, provided, however, that if such sale is: (i) upon economic
232 terms and conditions that are materially more favorable to the proposed purchaser than the economic
233 terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms
234 that are substantially the same as was offered by the department in the counter offer, then the owner
235 shall provide a copy of the new third party purchase contract, along with a proposed purchase contract
236 for execution by the department which shall contain the same terms and conditions as the executed
237 third party purchase contract, and the department shall have 30 days from the date it receives the third
238 party purchase contract and the proposed purchase contract to execute the proposed purchase contract
239 or such other agreement as is acceptable to the owner and the department.

240 (f) The owner shall, not later than 7 days after the execution thereof, provide the department
241 with a copy of any new or amended purchase contract executed with respect to the property during the
242 2 year period set forth in subsections (c) to (e), inclusive, and shall not later than 7 days after the
243 recording or filing thereof, provide the department with a copy of any deed or other document
244 transferring the owner's interest in the publicly-assisted housing development.

245 (g) Any submission to the department of a third party purchase contract, amended third party
246 purchase contract, deed or other document transferring the owner's interest in the publicly-assisted
247 housing development shall include a certification by the owner and, with respect to a document
248 executed by the third party buyer, the third party buyer, that the document is accurate and complete
249 and there are no other agreements between the owner and the third party buyer, or an affiliate of
250 either of them, with respect to the sale of the publicly-assisted housing development.

251 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

252 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by
253 eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a
254 foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the
255 department, is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a
256 proposed sale of a publicly-assisted development which the department has determined has section 8
257 contracts for all of the units in the development and the buyer has agreed, in a regulatory agreement, to
258 renew project-based section 8 assistance, or any successor program, for all units in the development
259 provided that at the time of such renewal, such assistance is available to the owner on economic terms
260 and conditions that are comparable to the existing assistance contract; (vi) a proposed sale of a publicly-
261 assisted development to an affiliate of the owner that is not a termination as determined by the
262 department; and (vii) a proposed sale pursuant to an agreement in effect on the effective date of this
263 chapter.

264 (b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall include
265 the name and address of any tenant organization in the request and shall provide a copy of its request
266 to the chief executive officer of the affected municipality, CEDAC, the local legal services organization as
267 designated by the department and the tenant organization at the time it files its exemption request with
268 the department. The department shall provide a copy of its written determination under said clauses
269 (iv), (v) or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the
270 tenant organization.

271 Section 7. For 3 years after termination, the rent for a protected low-income tenant who does
272 not receive an enhanced section 8 voucher shall not be increased more than once annually by the
273 increase in the consumer price index applicable to the area in which the publicly-assisted housing
274 development is located during the preceding 12 months plus 3 per cent. The foregoing shall not apply
275 to a low-income tenant: (i) who is income eligible for an enhanced section 8 voucher but does not obtain
276 one solely due to some action or inaction of the tenant on or after the date he or she is eligible to apply
277 for the enhanced section 8 voucher; or (ii) who would be eligible for an enhanced section 8 voucher if

278 this provision was not in effect. For a period of 3 years after termination, a protected low income
279 tenant shall not be evicted or involuntarily displaced from his apartment except for good cause related
280 to tenant fault.

281 Section 8. A purchase by the department or by a purchaser pursuant to this chapter shall be
282 subject to a regulatory agreement.

283 Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a
284 purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the
285 department for a certificate of compliance by submitting a written request for the certificate in a form
286 and with such documentation as required by the department to establish the owner's compliance to the
287 satisfaction of the department. At the same time, the owner shall provide a copy of the request to
288 CEDAC and the chief executive officer of the affected municipality. The owner shall provide a copy of
289 the owner's request to a tenant of the publicly-assisted housing upon request. The department shall
290 issue the certificate of compliance within 30 days after receipt of the application if it determines that
291 the owner has complied with said sections 2 and 3. The certificate of compliance shall be filed with the
292 registry of deeds within 1 year after the date of issuance.

293 SECTION 2. Within 45 days after the effective date of this act, the department of housing and
294 community development shall establish a 13-member advisory committee to consist of the
295 undersecretary of the department or her designee, the executive director of the Community Economic
296 Development Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1
297 member selected by the Massachusetts Municipal Association, 1 member selected by Citizens Housing
298 and Planning Association, 1 member selected by the Greater Boston Real Estate Board, 1 member
299 selected by the Real Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts
300 Association of Community Development Corp., 1 member selected by the Massachusetts Legal
301 Assistance Corporation, 1 member affiliated with the Affordable Housing Preservation Initiative of the
302 Local Initiatives Support Corporation, 1 member selected by the Massachusetts Chapter of the National
303 Association of Housing and Redevelopment Officials, and 2 members chosen by the department to
304 provide advice and recommendations to the department regarding regulations to implement this act.
305 The department shall promulgate regulations to effectuate the purposes and implement chapter 40T of
306 the General Laws not later than 150 days after the effective date of this act.

307 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws, housing
308 that qualified as publicly-assisted housing under any of the programs described in the definition of
309 "publicly-assisted housing" in section 1 of said chapter 40T that was not then subject to a purchase
310 contract in existence on the effective date of this act shall be subject to said chapter 40T for 4 years
311 after the date of the last event or occurrence that constituted a termination.

312 SECTION 4. Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws, an
313 owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining
314 prior to the date when the affordability restriction will cease to apply to such property, shall not be
315 required to give the 2-year notice required by said subsection (a), but shall provide such notice within 90

316 days of the effective date of this act. Notwithstanding subsection (b), an owner who, on the effective
317 date of this act has less than 1 year remaining prior to a termination shall not be required to give the 12-
318 month notice required by subsection (b), but shall provide such notice within 90 days after the effective
319 date of this act.

320