

HOUSE No. 5254

The Commonwealth of Massachusetts



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GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

January 9, 1975

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

Today I submit to your Honorable Bodies the attached legislation entitled, "An Act Enabling Certain Cities and Towns to Control Rents and Evictions."

This legislation does not alter any of the substantive provisions of Chapter 842 of the Acts of 1970. It merely installs the rent control law as a permanent part of the laws of the Commonwealth by re-enacting Chapter 842 virtually intact as a new Chapter 186A of the General Laws.

Your enactment in 1970 of Chapter 842 was a highly appropriate response to severe inflationary conditions in the rental housing market and a critical shortage of housing within the means of low and moderate income residents of the Commonwealth. These conditions are still with us, and indeed have worsened during recent years. While the rent component of the Bureau of Labor Statistics' Consumer Price Index for the metropolitan Boston area rose from 115.4 in 1970 to 144.9 in October 1974, the spendable average weekly earnings for a factory worker with three dependents, calculated in constant dollars, barely rose during the same period from \$102.19 in 1970 to \$104.62 in July 1974. Meanwhile, waiting lists for public and subsidized housing for both low-income families and the elderly have substantially lengthened, with many more eligible persons failing to apply because their chances for admission seem non-existent. These facts starkly demonstrate the human needs that require some means of controlling rents and evictions in this Commonwealth.

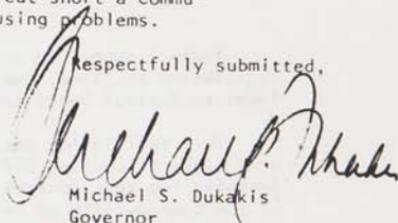
While rent control is not a panacea for our housing ills, or a substitute for the construction of new housing, the experience of the past four years has shown that a well-administered rent control program can play a critical role in moderating the effects of runaway inflation in this particularly susceptible sector of the economy.

The statewide rent control enabling law, Chapter 842 of the Acts of 1970, is due to expire on December 31, 1975.

It is necessary to focus discussions on rent control toward local needs, rather than on the general philosophy of control. It is obvious that such discussions are more appropriate at the local level than at the state. This legislation that I submit today permits such discussions to proceed without having the continual spectre of arbitrary termination. Rent control decisions should be made at the local level, not by a state body.

I stress local option in any discussion of rent control because, while the housing emergency that necessitates the enactment of a rent control enabling law has affected citizens throughout the Commonwealth the basic decisions of whether to adopt and how to implement a rent control program must be made at the local level. The elected officials and community leaders of each municipality are in the best position to assess the needs of that community. The purpose of the attached legislation is to preserve this opportunity to act on the local level, and to remove the current justifiable apprehension that the state enabling acts untimely expiration may cut short a community's ongoing response to its own housing problems.

Respectfully submitted,



Michael S. Dukakis
Governor

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT ENABLING CERTAIN CITIES AND TOWNS TO CONTROL RENTS AND EVICTIONS.

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
2 adding after Chapter 186, a new Chapter 186A, to read as
3 follows:—

4 Chapter 186A.

5 *Section 1. Declaration of Emergency.*

6 The general court finds and declares that a serious public
7 emergency exists with respect to the housing of a substantial
8 number of the citizens in certain areas of the commonwealth but
9 especially in the cities of the commonwealth regardless of
10 population and towns with a population of fifty thousand or
11 over, which emergency has been created by housing demolition,
12 deterioration of a substantial portion of the existing housing
13 stock, insufficient new housing construction, increased costs of
14 construction and finance, inflation, and which has resulted in a
15 substantial and increasing shortage of rental housing accom-
16 modations for families of low and moderate income and
17 abnormally high rents; that unless residential rents and eviction
18 of tenants are regulated and controlled, such emergency and the
19 further inflationary pressures resulting therefrom will produce
20 serious threats to the public health, safety and general welfare of
21 the citizens of the aforementioned communities and in other
22 communities adjacent to them; that such emergency should be
23 met by the commonwealth immediately and with due regard for
24 the rights and responsibilities of its local communities.

25 *Section 2.*

26 This chapter shall take effect in any city and in any town with
27 a population of fifty thousand or over, on the thirtieth day
28 following acceptance of its provisions. A city or town which has

29 accepted this act may, in like manner, revoke its acceptance.

30 *Section 3. Definitions.*

31 (a) "Rental units", any building, structure, or part thereof, or
32 land appurtenant thereto, or any other real or personal property
33 rented or offered for rent for living or dwelling purposes,
34 including houses, apartments, rooming or boardinghouse units,
35 and other properties used for living or dwelling purposes,
36 together with all services connected with the use or occupancy of
37 such property.

38 (b) "Controlled rental units", all rental units except:

39 (1) rental units in hotels, motels, inns, tourist homes and
40 rooming or boarding houses which are rented primarily to
41 transient guests for a period of less than fourteen consecutive
42 days;

43 (2) rental units the construction of which was completed on
44 or after January one, nineteen hundred and sixty-nine, or which
45 are housing units created by conversion from a nonhousing to a
46 housing use on or after said date;

47 (3) rental units which a governmental unit, agency, or
48 authority either:

49 (i) owns or operates; or

50 (ii) regulates the rents, other than units regulated (a) under
51 the provisions of this act, or (b) under the provisions of chapter
52 seven hundred and ninety-seven of the acts of nineteen hundred
53 and sixty-nine and any act in amendment thereof or in addition
54 thereto, or (c) under the provisions of any other general or
55 special law authorizing municipal control of rental levels for all
56 or certain rental units within a municipality; or

57 (iii) finances or subsidizes, if the imposition or rent control
58 would result in the cancellation or withdrawal, by law, of such
59 financing or subsidy;

60 (4) rental units in cooperatives;

61 (5) rental units in any hospital, convent, monastery, asylum,
62 public institution or college or school dormitory operated
63 exclusively for charitable or educational purposes; or nursing
64 home or rest home or charitable home for the aged, not
65 organized or operated for profit;

66 (6) the rental unit or units in an owner-occupied two-family
67 or three family house;

68 (7) that a municipality accepting the provisions of this

69 chapter may exempt those rental units for which the rent
70 charges exceed limits specified by said municipality; provided
71 that in no event shall more than twenty-five per cent of the total
72 rental units in said municipality be exempted under this
73 subsection.

74 (c) "Rent", the consideration, including any bonus, benefits,
75 or gratuity demanded or received for or in connection with the
76 use or occupancy of rental units or the transfer of a lease of such
77 rental units.

78 (d) "Services", repairs, replacement, maintenance, painting,
79 providing light, heat, hot and cold water, elevator service,
80 window shades and screens, storage, kitchen, bath and laundry
81 facilities and privileges, janitor services, refuse removal,
82 furnishings, and any other benefit, privilege or facility connected
83 with the use or occupancy of any rental unit. Services to a rental
84 unit shall include a proportionate part of services provided to
85 common facilities of the building in which the rental unit is
86 contained.

87 *Section 4. State Assistance and Review.*

88 (a) The department of community affairs shall establish a
89 bureau of rental housing to assist municipalities which accept
90 this Chapter to carry out local rent control in a manner to best
91 effectuate the provisions of the chapter and with due regard for
92 the rights and responsibilities of the accepting municipality.

93 (b) The bureau of rental housing shall carry out studies and
94 analyses, collect and publish data and information and render
95 other assistance to municipalities which have accepted the
96 provisions of this chapter or which propose to do so.

97 (c) Said bureau may advise a municipality which has accepted
98 the provisions of this chapter that the local execution of rent
99 control does not conform to the intent of this chapter.

100 *Section 5. Local Rent Board or Administration.*

101 (a) At the time of acceptance of this chapter the city or town
102 shall also determine in like manner whether the chapter will be
103 administered by a rent control board or by a rent control
104 administrator. Upon acceptance of this chapter and prior to its
105 effective date, the mayor of a city, or the city manager in a city
106 having a manager form of government, or the board of
107 selectmen in a town shall appoint rent control administrator or a
108 rent control board to serve at the pleasure of the appointing

109 authority.

110 (b) Members of rent boards shall receive no compensation for
111 their services, but shall be reimbursed by their city or town for
112 necessary expenses incurred in the performance of their duties.

113 (c) Either the rent control board, hereinafter called the board,
114 or the rent control administrator, hereinafter called the
115 administrator, as the case may be, shall be responsible for
116 carrying out the provisions of this chapter, and shall hire, with
117 the approval of the appointing official or officials, such
118 personnel as are needed, shall promulgate such policies, rules
119 and regulations as will further the provisions of this chapter and
120 shall recommend to the city or town for adoption such
121 ordinances and by-laws as may be necessary to carry out the
122 purposes of this chapter.

123 (d) The board or the administrator may make such studies
124 and investigations, conduct such hearings, and obtain such
125 information as is deemed necessary in promulgating any
126 regulation, rule or order under this chapter, or in administering
127 and enforcing this chapter and regulations and orders
128 promulgated hereunder. For the foregoing purposes, a person
129 may be summoned to attend and testify and to produce books
130 and papers in like manner as he may be summoned to attend as
131 a witness before a court. Any person who rents or offers for rent
132 or acts as broker or agent for the rental of any controlled rental
133 unit may be required to furnish under oath any information
134 required by the board or administrator, and to produce records
135 and other documents and make reports. Such persons shall have
136 the right to be represented by counsel, and a transcript shall be
137 taken of all testimony and such person shall have the right to
138 examine said transcript at reasonable times and places. Section
139 ten of chapter two hundred and thirty-three of the General Laws
140 shall apply, and for the purposes of this chapter a justice of the
141 district court shall have the same power as a justice of the
142 supreme judicial or superior court to implement the provisions
143 of said section.

144 (e) The board or the administrator shall have the power to
145 issue orders and promulgate regulations to effectuate the
146 purposes of this chapter.

147 *Section 6. Maximum Rent.*

148 (a) The maximum rent of a controlled rental unit shall be the

149 rent charged the occupant for the month six months prior to the
150 acceptance of this chapter by a municipality; provided that the
151 rent board or the administrator of any municipality, wherein the
152 rents are subject to regulation by any general or special law, may
153 establish as a maximum rent the maximum rent, if any,
154 established for rental units within such municipality by such
155 general or special law. If the rental unit was unoccupied at that
156 time but was occupied at any time prior to acceptance of this
157 chapter the maximum rent shall be the rent charged therefor for
158 the month closest to six months prior to the effective date of the
159 chapter. If the maximum rent is not otherwise established, it
160 shall be established by the board or the administrator. Any
161 maximum rent may be subsequently adjusted under the
162 provisions of section seven.

163 (b) The board or the administrator shall require registration
164 of all controlled rental units on forms authorized or to be
165 provided by said board or administrator.

166 *Section 7. Maximum Rent Adjustment.*

167 (a) The board or the administrator shall make such individual
168 or general adjustments, either upward or downward, of the
169 maximum rent established by section six for any controlled
170 rental unit or any class of controlled rental units as may be
171 necessary to assure that rents for controlled rental units are
172 established at levels which yield to landlords a fair net operating
173 income for such units. For the purposes of this section, the word
174 "class" shall include all the controlled rental units within a
175 municipality or any categories of such rental units based on size,
176 age, construction, rent, geographic area or other characteristics,
177 providing the board or the administrator has by regulation
178 defined any such categories.

179 (b) The following factors, among other relevant factors,
180 which the board or the administrator by regulation may define,
181 shall be considered in determining whether a controlled rental
182 unit yields a fair net operating income:

- 183 (1) increases or decreases in property taxes;
- 184 (2) unavoidable increases or any decreases in operating and
185 maintenance expenses;
- 186 (3) capital improvement of the housing unit as distinguished
187 from ordinary repair, replacement and maintenance;

188 (4) increases or decreases in living space, services, furniture,
189 furnishings or equipment;

190 (5) substantial deterioration of the housing units other than
191 as a result of ordinary wear and tear; and

192 (6) failure to perform ordinary repair, replacement and
193 maintenance.

194 (c) For the purpose of adjusting rents under the provisions of
195 this section, the board or the administrator may promulgate a
196 schedule of standard rental increases or decreases for improve-
197 ment or deterioration in specific services and facilities.

198 (d) The board or the administrator may refuse to grant a rent
199 increase under this section, if it determines that the affected
200 rental unit does not comply with the state sanitary code and any
201 applicable municipal codes, ordinances or by-laws, and if it
202 determines that such lack of compliance is due to the failure of
203 the landlord to provide normal and adequate repair and
204 maintenance. The board or the administrator may refuse to
205 grant a rent decrease under this section, if it determines that a
206 tenant is more than sixty days in arrears in payment of rent
207 unless such arrearage is due to a withholding of rent under the
208 provisions of section eight A of chapter two hundred and thirty-
209 nine of the General Laws.

210 (e) The board or the administrator may remove maximum
211 rental levels, established under this section and section six, for
212 any class of controlled rental units if in its judgment the need for
213 continuing such maximum rental levels no longer exists because
214 of sufficient construction of new rental units the rental levels for
215 which are comparable to the rental levels of the class of
216 controlled rental units for which maximum rental levels are to
217 be discontinued or because the demand for rental units has been
218 otherwise met. Any maximum rental level removed under this
219 paragraph shall be reimposed or adjusted and reimposed upon a
220 finding by the rent board or administrator that a substantial
221 shortage of rental units exists in such city or town and that the
222 reimposition of rent control is necessary in the public interest.
223 Any action under this paragraph shall be subject to the hearing
224 and notice requirements of paragraph (b) of section eight.

225 *Section 8. Rent Adjustment Hearings.*

226 (a) The board or the administrator shall consider an
227 adjustment of rent for an individual controlled rental unit upon
228 receipt of a petition for adjustment filed by the landlord or
229 tenant of such unit or upon its own initiative. The board or the
230 administrator shall notify the landlord, if the petition was filed
231 by the tenant, or the tenant, if the petition was filed by the
232 landlord, of the receipt of such petition and of the right of either
233 party to request a hearing. If a hearing is requested by either
234 party, or if the action is undertaken on the initiative of the
235 board or the administrator the hearing shall be conducted before
236 the administrator or at least one member of the board prior to
237 the decision by the board or the administrator to grant or refuse
238 a rental adjustment. Notice of the time and place of the hearing
239 shall be furnished to the landlord and tenant. The board or the
240 administrator may consolidate petitions relating to controlled
241 rental units in the same building and all such petitions may be
242 considered in a single hearing.

243 (b) On its own initiative, the board or the administrator may
244 make a general adjustment, by percentage, of the rental levels
245 for any class of controlled rental units within a municipality.
246 Prior to making such adjustment, a public hearing shall be held
247 before the administrator or before at least a majority of the
248 board. Notice that an adjustment is under consideration, a
249 description of the class of rental units which would be affected
250 by the adjustment, and the time and place of said public hearing
251 shall be published three times in at least one newspaper having a
252 general circulation within the city or town.

253 (c) Notwithstanding any other provision of this section, the
254 board or the administrator may, without holding a hearing,
255 refuse to adjust a rent level for an individual rental unit if a
256 hearing has been held with regard to the rental level of such unit
257 within twelve months.

258 (d) Hearings required by paragraph (a) shall be conducted in
259 accordance with the provisions of section eleven of chapter
260 thirty A of the General Laws except that requirements (7) and
261 (8) of said section eleven shall not apply to such hearings.

262 *Section 9. Evictions.*

263 (a) No person shall bring any action to recover possession of
264 a controlled rental unit unless:

265 (1) the tenant has failed to pay the rent to which the landlord
266 is entitled;

267 (2) the tenant has violated an obligation or covenant of his
268 tenancy other than the obligation to surrender possession upon
269 proper notice and has failed to cure such violation after having
270 received written notice thereof from the landlord;

271 (3) the tenant is committing or permitting to exist a nuisance
272 in, or is causing substantial damage to, the controlled rental
273 unit, or is creating a substantial interference with the comfort,
274 safety, or enjoyment of the landlord or other occupants of the
275 same or any adjacent accommodation;

276 (4) the tenant is convicted of using or permitting a controlled
277 rental unit to be used for any illegal purpose;

278 (5) the tenant, who had a written lease or rental agreement
279 which terminated on or after this act has taken effect in a city or
280 town, has refused, after written request or demand by the
281 landlord, to execute a written extension or renewal thereof for a
282 further term of like duration and in such terms that are not
283 inconsistent with or violative of any provisions of this chapter;

284 (6) the tenant has refused the landlord reasonable access to
285 the unit for the purpose of making necessary repairs or
286 improvements required by the laws of the United States, the
287 commonwealth, or any political subdivision thereof, or for the
288 purpose of inspection as permitted or required by the lease or by
289 law, or for the purpose of showing the rental unit to any
290 prospective purchaser or mortgagee;

291 (7) the person holding at the end of a lease term is a
292 subtenant not approved by the landlord;

293 (8) the landlord seeks to recover possession in good faith for
294 use and occupancy of himself, or his children, parents, brother,
295 sister, father-in-law, son-in-law, or daughter-in-law;

296 (9) the landlord seeks to recover possession to demolish or
297 otherwise remove the unit from housing use; and

298 (10) the landlord seeks to recover possession for any other just
299 case, provided that his purpose is not in conflict with the
300 provisions and purposes of this act.

301 (b) A landlord seeking to recover possession of a controlled
302 rental unit shall apply to the board or the administrator for a
303 certificate of eviction. Upon receipt of such an application, the
304 board or the administrator shall send a copy of the application

305 to the tenant of the controlled rental unit together with a
306 notification of all rights and procedures available under this
307 section. If the board or the administrator finds that the facts
308 attested to in the landlord's petition are valid and in compliance
309 with paragraph (a), the certificate of eviction shall be issued.

310 (c) A landlord who seeks to recover possession of a controlled
311 rental unit without obtaining such certificate of eviction shall be
312 deemed to have violated this chapter, and the board or the
313 administrator may initiate a criminal prosecution for such
314 violation.

315 (d) Notwithstanding the provisions of this section the United
316 States, the commonwealth, or any agency or political subdivi-
317 sion thereof, may maintain an action or proceeding to recover
318 possession of any rental unit operated by it if such action or
319 proceeding is authorized by the statute or regulation under
320 which such units are administered.

321 (e) The provisions of this section shall be construed as
322 additional restrictions on the right to recover possession of a
323 controlled rental unit. No provision of this section shall entitle
324 any person to recover possession of such a unit.

325 *Section 10. Judicial Review.*

326 (a) Any person who is aggrieved by any action, regulation or
327 order of the board or the administrator may file a complaint
328 against the board or the administrator in a district court within
329 the territorial jurisdiction of which is located the controlled
330 rental unit affected by such action, regulation or order, and
331 thereupon an order of notice shall be issued by such court and
332 served on the board or the administrator. Such district court
333 shall have exclusive original jurisdiction over such proceedings
334 and shall be authorized to take such action with respect thereto
335 as is provided in the case of the superior court under the
336 provisions of chapter two hundred and thirty-one A of the
337 General Laws, except that section three of said chapter two
338 hundred and thirty-one A shall not apply. All orders, judgments
339 and decrees of such district court may be appealed as is provided
340 in the case of a civil action in such district court.

341 (b) The district court within the territorial jurisdiction of
342 which is located the controlled rental unit affected shall have
343 exclusive original jurisdiction over actions arising out of the

344 provisions of section eleven.

345 *Section II. Civil Remedies.*

346 (a) Any person who demands, accepts, receives or retains any
347 payment of rent in excess of the maximum lawful rent, in
348 violation of the provisions of this act or any regulation or order
349 hereunder promulgated, shall be liable as hereinafter provided to
350 the person from whom such payment is demanded, accepted,
351 received or retained, or to the municipality for reasonable
352 attorney's fees and costs as determined by the court, plus
353 liquidated damages in the amount of one hundred dollars, or
354 not more than three times the amount by which the payment or
355 payments demanded, accepted, received or retained exceed the
356 maximum rent which could be lawfully demanded, accepted,
357 received or retained, whichever is the greater; provided that if
358 the defendant proves that the violation was neither willful nor
359 the result of failure to take practicable precautions against the
360 occurrence of the violation, the amount of such liquidated
361 damages shall be the amount of the overcharge or overcharges.

362 (b) If the person from whom such payment is demanded,
363 accepted, received or retained in violation of the provisions of
364 this act or any rule or regulation hereunder promulgated fails to
365 bring an action under this section within thirty days from the
366 date of the occurrence of the violation, the board or the
367 administrator may either settle the claim arising out of the
368 violation or bring such action. Settlement by the board or the
369 administrator shall thereafter bar any other person from
370 bringing action for the violation or violations with regard to
371 which a settlement has been reached. If the board or the
372 administrator settles said claim, it shall be entitled to retain the
373 costs it incurred in the settlement thereof, and the person against
374 whom the violation was committed shall be entitled to the
375 remainder. If the board or the administrator brings action under
376 the provisions of this section, it shall be entitled to receive
377 attorneys' fees and costs under the provisions of paragraph (a)
378 and the person against whom the violation was committed shall
379 be awarded liquidated damages under said paragraph (a).

380 (c) A judgment for damages or on the merits in any action
381 under this section shall be a bar to any recovery under this
382 section in any other action against the same defendant on
383 account of any violation with respect to the same person prior to

384 the institution of the action in which such judgment was
385 rendered. Action to recover liquidated damages under the
386 provisions of this section shall not be brought later than one
387 year after the date of the violation. A single action for damages
388 under the provisions of this section may include all violations of
389 the provisions of this section committed by the same defendant
390 against the same person.

391 *Section 12. Criminal Penalties.*

392 (a) It shall be unlawful for any person to demand, accept,
393 receive or retain any rent for the use of occupancy of any
394 controlled rental unit in excess of the maximum rent prescribed
395 therefor under the provisions of this chapter or any order or
396 regulation hereunder promulgated, or otherwise to do or omit to
397 do any action in violation of the provisions of this chapter or
398 any order or regulation hereunder promulgated.

399 (b) It shall be unlawful for any person to demand, accept,
400 receive or retain any payment which exceeds the maximum
401 lawful rent for one month as a finder's fee or service charge for
402 the opportunity to examine or lease any controlled rental unit,
403 and no finder's fee or service charge shall be lawful unless the
404 person from whom the payment is demanded, accepted, received
405 or retained actually rents or leases the controlled rental unit with
406 regard to which payment of said fee or said charge has been
407 demanded, accepted, received or retained.

408 (c) Whoever willfully violates any provision of this chapter or
409 any rule or regulation hereunder promulgated, or whoever
410 knowingly makes any false statement in any testimony before
411 the rent board or administrator or whoever knowingly supplies
412 the rent board or administrator with any false information shall
413 be punished by a fine of not more than five hundred dollars or
414 by imprisonment for not more than ninety days or both;
415 provided, however, that in the case of a second or subsequent
416 offense, such person shall be punished by a fine of not more
417 than three thousand dollars or by imprisonment for not more
418 than one year, or both.

419 *Section 13. Severability.*

420 If any provisions of this act or the application of such
421 provision to any person or circumstance shall be held invalid,
422 the validity of the remainder of this act and the applicability of

423 such provision to other persons or circumstances shall not be
424 affected thereby.

1 SECTION 2. Any city or town in which the provisions of
2 Chapter 842 of the Act of 1970 are in effect on the effective
3 date of this chapter may continue said provisions without
4 further acceptance thereof or action thereon.

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