HOUSE . . . . . No. 900

By Mr. Ambler of Weymouth, petition of Robert B. Ambler relative to lease payments based upon real estate tax increases in cities and towns which have classified property according to use for purposes of taxation. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT RELATIVE TO LEASE PAYMENTS BASED UPON REAL ESTATE TAX INCREASES IN CITIES AND TOWNS WHICH HAVE CLASSIFIED PROPERTY ACCORDING TO USE FOR PURPOSES OF TAXATION.

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

SECTION 1. Declaration of Emergency. The General Court hereby finds and declares: —

(1) all cities and towns in the commonwealth are in the process of complying with a mandate that they assess all property for purposes of taxation at its full fair cash value;

(2) as a part of such revaluations, cities and towns must classify all property according to its use;

(3) where property is used or held for use for more than one purpose and such uses result in different classifications, assessors must allocate to each classification the percentage of the fair cash valuation of the property devoted to each use;

(4) there are many individual parcels of real property throughout the commonwealth which contain mixed residential and commercial uses;

(5) when a city or town establishes a different property tax rate for each class of property in accordance with the provisions of section fifty-six of chapter forty the tenants of such mixed use parcels, so-called, who occupy their respective premises pursuant to leases containing clauses governing the payment of real estate tax increases may be obligated to bear inequitable portion of the property tax assessed against the parcel as a whole;

(6) the intention of the General Court in adopting chapter seven hundred and ninety-seven of the acts of 1979 providing for the taxation of real property usage classification was to insure that there was an equitable application of the real property tax burden among commercial, industrial and residential property owners;

(7) tax escalation clauses which may presently exist in leases represent agreements reached between lessees and their lessors prior to revaluation of property at full fair cash value and classification of property for purposes of taxation according to use and, therefore, will not reflect the intended effects of such classification; and

(8) such intention of the General Court with respect to classification of property for purposes of taxation must be extended to such lease clauses governing the payment of real estate tax increases to insure an equitable distribution of the property tax burden between the residential and commercial tenants of such mixed use parcels.

SECTION 2. Section 15C of chapter 186 of the General Laws, inserted by chapter 445 of the acts of 1971 and most recently amended by chapter 215 of the acts of 1975, is hereby amended by striking out the entire section and inserting in place thereof the following new section: —

Section 15C. No lease relating to residential real estate shall contain a provision which obligates a lessee to make payments to the lessor on account of an increased real estate tax levied during the term of the lease, unless such provision expressly sets forth (1) that the lessee shall be obligated to pay only that proportion of such increased tax as the unit leased by him bears to the whole of the residential real estate so taxed, (2) the exact percentage of any such increase which the lessee shall pay, and (3) that if the lessor obtains an abatement of the real estate tax levied on the whole of the residential real estate of which the unit leased by the lessee is a part, a proportionate share of such abatement, less reasonable attorney's fees, if any, shall be refunded to said lessee.

Where property which is used or held for more than one purpose and such uses result in different classifications for which the assessors have allocated to each classification the percentage of the fair cash valuation of the property devoted to each use and

22 the city or town has established a different property tax rate for
23 each class of property in accordance with the provisions of section
24 fifty-six of chapter forty, no lessee shall be obligated to pay more
25 than a proportionate share of any increase in the property tax
26 attributable to that class of property of which his leased space is
27 a part, provided, however, that a lessor may, notwithstanding the
28 provisions of a lease in effect on the effective date of this section,
29 obligate a lessee to make payments on account of an increased
30 real estate tax levied by a city or town where the property is located
31 establishing a different property tax rate for each case of property
32 in accordance with said section fifty-six of chapter forty, but such
33 payment shall be limited to the lessee's proportionate share of the
34 increase for that class of property of which his leased space is a
35 part.
36 If the exact percentage of any such increased tax contained in
37 such a provision is found to exceed that proportion of such
38 increased tax as the lessee's unit or leased space bears to the whole
39 of the real estate or classified portion thereof so taxed, then the
40 lessor shall return to the lessee that amount of the tax payment
41 collected from the lessee which exceeded the lessee's proportionate
42 share of the increased tax, plus interest calculated at the rate of
43 five percent per year from the date of collection.
44 Any provision of a lease in violation of the provisions of this
45 section shall be deemed to be against public policy and void.

1 SECTION 3. This act shall be effective with respect to tax
2 years beginning on or after January first, nineteen hundred and
3 eighty-two.