SENATE DOCKET, NO. 694 FILED ON: 1/20/2011

SENATE . . . . . No. 582

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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:

An Act relative to public housing innovation program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Harriette L. Chandler	☐ *[District]* ☐
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Patricia D. Jehlen	☐ *[District]* ☐
Michael O. Moore	☐ *[District]* ☐
Mark C. Montigny	☐ *[District]* ☐
Marc R. Pacheco	☐ *[District]* ☐
Anthony W. Petruccelli	☐ *[District]*

Cory Atkins	*14th Middlesex*
Jennifer E. Benson	*37th Middlesex*
Linda Dorcena Forry	*12th Suffolk*
Jason M. Lewis	*31st Middlesex*
Martha M. Walz	*8th Suffolk*

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SENATE . . . . . No. 582

By Ms. Chandler, petition (accompanied by bill, Senate, No. 582) of Harriette Chandler, Sal DiDomenico, Patricia Jehlen and other members of the General Court for legislation relative to public housing innovation program [Joint Committee on Housing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *2308* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to public housing innovation program.

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. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after section 26A of chapter 121B the following section:--

Section 26B.

a. The following words, whenever used in this section, shall, unless a different meaning clearly appears from the context, have the following meanings:--

"Affordable housing", homeownership or rental housing which is restricted to occupancy by low or moderate income households of 1 or more persons and for which the sale price or rents are affordable as defined by the criteria for inclusion in the department's subsidized housing inventory or consistent with funding sources.

"Affordable housing development", a development of new or rehabilitated affordable housing, which may include market-rate housing if such market-rate housing is reasonably necessary for the financial feasibility of construction or operation of the affordable housing.

"Extremely low income household", a household with a gross income at or less than 30 per cent of area median household income as most recently determined by the U.S. Department of Housing and Urban Development, adjusted for household size.

16 “Low or moderate income household”, a household with gross income at or less than 80
17 per cent of area median household income as most recently determined by the U.S. Department
18 of Housing and Urban Development, adjusted for household size.

19 “Market-rate housing”, homeownership or rental housing which is not restricted to
20 occupancy by low or moderate income households. Market-rate housing may be made available
21 for occupancy by households without regard to income, and it may also include housing subject
22 to maximum income limits to be occupied by households with gross income greater than 80 per
23 cent but not more than 150 per cent of the area median household income as most recently
24 determined by the United States Department of Housing and Urban Development, adjusted for
25 household size.

26 “Program”, the public housing innovation program under this section.

27 “Public housing”, state-assisted housing developed through funds provided under
28 chapter 200 of the acts of 1948, chapter 667 of the acts of 1956, chapter 705 of the acts of 1966,
29 chapter 689 of the acts of 1974 and chapter 167 of the acts of 1987.

30 “Very low income household”, a household with a gross income at or less than 50 per
31 cent but greater than 30 per cent of area median household income as most recently determined
32 by the U.S. Department of Housing and Urban Development, adjusted for household size.

33 b. (1) A housing authority or regional housing authority may apply to the department
34 for approval to participate in the program. Participation shall be limited to applicants that have
35 the ability to plan and carry out activities under the program, as evidenced by prior performance
36 in the operation and maintenance of public housing, demonstrate a need to redevelop and repair
37 occupied and vacant public housing units, and other appropriate factors as determined by the
38 director of the department.

39 (2) The department may determine the housing authorities participating in the
40 program, provided that, the total number of authorities may not exceed 10 authorities. In
41 selecting participating authorities, the department shall establish criteria that provides for
42 representation of housing authorities having various characteristics, including both large and
43 small housing authorities, housing authorities serving urban, suburban and rural areas, and
44 housing authorities in various geographical regions throughout the commonwealth.

45 (3) The department shall require program applicants to describe how tenants
46 may be provided with independent technical assistance sufficient to allow them meaningful and
47 informed input and shall encourage applications that demonstrate, create, or seek to achieve, with
48 respect to public housing: (i) innovative models for the redevelopment and repair of public
49 housing including for the elderly and frail elderly; (ii) innovative models for improved
50 management; (iii) coordination among several housing authorities; (iv) economic efficiencies;

51 and (v) expansion of economic opportunities for tenants and the commonwealth. Additionally,
52 the department shall encourage applications that achieve the development of affordable housing.

53 (4) Applications may include less than the applicant's entire portfolio of housing
54 at the applicant's choosing. The department shall act on the application within 90 days of its
55 submission and shall approve applications that meet the criteria established by the director, up to
56 the number established by the department. The department and the participating housing
57 authority shall enter into a program participation agreement summarizing the terms of
58 participation, voluntary withdrawal, and termination for material default and a timetable for
59 achieving objectives of the program. The initial term of participation shall be 7 years, unless the
60 applicant requests a shorter time, which shall be extended in whole or in part by the department
61 so long as: (i) the housing authority has made satisfactory progress toward its goals; (ii) the
62 extension will meet the original objectives of the program; and (iii) the housing authority has not
63 received a negative evaluation pursuant to subsection (n) of this section.

64 (5) Upon expiration, withdrawal or termination of an agreement, the department
65 shall work cooperatively with the housing authority in a transition process. The transition
66 process may provide for retention of elements of the program implemented during participation
67 including, but not limited to, contractual agreements with third parties that contain terms that
68 extend beyond the term of participation that were referenced in the program participation
69 agreement, approved annual plan or approved annual report.

70 c. The department, subject to appropriation, shall disburse all funding for a participating
71 housing authority or regional housing authority on a predictable schedule to permit and
72 encourage planning and efficiency by the housing authority.

73 d. The sections of this chapter which conflict with the powers granted under this section
74 or substantially restrict a housing authority's ability to achieve the goals specified in its
75 application or plan shall not apply to a housing authority or regional housing authority approved
76 by the department to participate in the public housing initiative program to the extent the
77 department determines it is necessary, and except for the provisions in paragraph g of this
78 section.

79 e. Housing authorities and regional housing authorities participating in the program shall,
80 in addition to those powers conferred in this chapter, have the following powers:

81 (1) to combine all forms of assistance received from the commonwealth and other
82 sources, including, but not limited to public housing operating subsidies appropriated by the
83 commonwealth through a general appropriations act and public housing modernization funds
84 authorized by the commonwealth to be funded through the sale of general obligation bonds,
85 other funds or grants; provided that, a housing authority shall not receive diminished assistance
86 by virtue of participation in the program under this chapter;

87 (2) to establish a reasonable rent policy, which shall be included in the annual
88 plan required by subsection (h), that shall: (A) provide for rents that are affordable to tenants
89 throughout the term of the program; (B) be designed to provide incentives to improved
90 employment and training and self-sufficiency by participating families; (C) include transition
91 and hardship provisions; (D) include in the transition period a limit on rent increases in any 1
92 year related solely to the change in the rent policy to no more than 10 per cent for the duration of
93 the transition period; (E) provide a rent cap for tenant households at or below 50 per cent of area
94 median income, adjusted for family size, of not more than the maximum tenant rental payments
95 including, if applicable, minimum rents permitted by section 32; and (F) provide a rent cap for
96 elderly and handicapped persons of low income of not more than the maximum tenant rental
97 payments including, if applicable, minimum rents permitted by section 32 and subsection (e) of
98 section 40;

99 (3) to establish, and include as part of the annual plan required by subsection (h),
100 local methods of tenant or homeowner selection; provided that, the method is fair, objective,
101 public and does not discriminate against any applicant based on any protected category in
102 chapter 151B or any other fair housing laws or department policies and provides admissions
103 preferences for homeless households, veterans and victims of domestic violence;

104 (4) to create efficient, fair and open procurement policies for supplies, services,
105 and real property, designed to reduce costs and to meet local need, which shall be included in the
106 annual plan required by subsection (h);

107 (5) To participate in a mixed public/private affordable housing development or
108 create any legal entities or instrumentalities necessary to participate in mixed public private
109 affordable housing development designed to rehabilitate, repair, replace, or develop, affordable
110 housing, including public housing developments and projects developed pursuant to sections 26,
111 34, and 40 of chapter 121B.

112 (6) to create partnerships or consortia with other public or private entities for the
113 operation, financing, or development of any program otherwise authorized by law;

114 (7) to acquire any property to carry out its purposes, and to dispose of any
115 property of the local housing authority without repayment of bonds to the commonwealth
116 notwithstanding any provision of this chapter to the contrary, unless otherwise required by law
117 or contract, provided that the proceeds of any such disposition must be applied to acquisition,
118 operation, development, rehabilitation, or repair of public or affordable housing consistent with
119 the limitations on use of proceeds in clause (E) of subsection (g); and

120 (8) to enter into energy services contracts in accordance with section 11C of
121 chapter 25 for a period of up to 20 years.

122 f. Projects pursuant to this section may include a mix of extremely low income
123 households, low or moderate income households, and market-rate housing, and may utilize any
124 available source of rental subsidy or financial assistance; . provided that operating subsidies
125 appropriated by the legislature and bond funds authorized by the legislature for the benefit of low
126 rent housing projects operated pursuant to sections 32 and 40 of chapter 121B shall not be used
127 to fund capital or operating costs other than those for the redevelopment, repair and operation,
128 including services benefitting the tenants, of such housing.

129 g. Notwithstanding the provisions of subsection (e), the local housing authority shall:

130 (1) comply with the provisions of section 12, related to wages, labor
131 requirements, and Social Security;

132 (2) comply with the provisions of section 29, related to wage rates and collective
133 bargaining;

134 (3) to retain the same number of public housing units as existed before
135 participation in this program to the greatest extent possible shall; (A) provide for full tenant
136 participation, including public hearing, on adoption or material amendment of its annual plan as
137 required under subsection (h); (B) provide for a tenant lease and grievance procedure
138 substantially similar to that in effect prior to entry into the program under this section; (C)
139 provide that evictions shall be only for good cause; (D) assure that housing assisted under the
140 program in this chapter is decent, safe and sanitary, and that, excepting any market-rate housing,
141 the housing is deed restricted to occupancy by extremely-low, very low, or low and moderate-
142 income households at affordable rents or sales prices, in perpetuity or for such other term as may
143 be approved by the department, consistent with funding sources; and (E) assure that proceeds
144 from the disposition of public housing and funds generated from new affordable and market
145 housing created to replace public housing, unless restricted to a particular use, shall be allocated
146 to the reconstruction, rehabilitation, or repair of public housing developments;

147 (4) assure that if a participating housing authority redevelops its public housing
148 units, all households residing in the units at the time of planned redevelopment shall receive
149 relocation assistance, if eligible, under this chapter or other applicable statutes. Said households
150 shall have the right to return to the redeveloped public housing, unless such household is
151 determined to be in unlawful occupancy prior to the approval of the housing authority's
152 application, has materially breached the lease agreement or has been evicted for cause, under
153 applicable law subject to units of the appropriate size and requirements being available. Such
154 households shall have priority for placement over new applicants; and

155 (5) comply with chapter 334 of the acts of 2006.

156 h. Each housing authority participating in the program under this section shall prepare an
157 annual plan. Tenants assisted by the housing authority and the wider community shall be

158 provided with adequate notice and opportunities to participate in the development and
159 preparation of the plan. Said tenants shall be provided an opportunity to comment and make
160 recommendations on the plan which shall include not less than 1 public hearing held at a time
161 and location that the participating housing authority reasonably believes will facilitate attendance
162 by, and input from, tenants.

163 The annual plan shall:

164 state the housing authority's goals and objectives under the program for its fiscal year;

165 (2) describe the housing authority's proposed use of assistance for activities under the
166 program for the fiscal year;

167 (3) describe how the housing authority will achieve the repair and redevelopment of
168 public housing;

169 (4) state the housing authority's proposed income mix for its housing portfolio of: (A)
170 extremely low income households; (B)very low income households; (C) low or moderate
171 income households; and (D) market rate housing;

172 (5) explain how the housing authority's proposed activities will meet its goals and
173 objectives;

174 (6) include appropriate budgets and financial statements; and

175 (7) describe the tenant participation procedure and what independent technical assistance
176 will be made available to tenants.

177 Any plan submitted pursuant to subsection (h) shall be deemed approved unless the
178 department, within 60 days of submission, issues a written disapproval. The department shall
179 disapprove the plan if the department reasonably determines, based on information contained in
180 the plan or other reliable information available to the department, that the plan does not comply
181 with the provisions of this section or other applicable law or cannot reasonably be expected to
182 achieve the purposes set out in this section. The housing authority shall notify tenants of such
183 approval or disapproval.

184 i. In place of all other planning and reporting requirements of the department, each
185 housing authority participating in the program under this chapter shall submit to the department
186 annually a single annual report, in a form and at a time specified by the department. The annual
187 report shall be the primary means by which the housing authority shall be required to provide
188 information to the department, to tenants and the public on the activities assisted under this
189 section during a fiscal year, unless the department has reason to believe that the housing
190 authority has violated the terms of the program.

191 Each annual report shall:

192 (1) document the housing authority's use of assistance under the program,
193 including appropriate financial statements;

194 (2) describe and analyze the effect of assisted activities in addressing the
195 objectives of this section, including the effect of rent and tenant selection policies;

196 (3) state the previous year's income mix of residents in the housing authority's
197 public housing and affordable housing developments under this program;

198 (4) include a certification by the housing authority that it has prepared an annual
199 plan that was prepared in accordance with subsection (h);

200 (5) describe and document how the housing authority has provided tenants
201 assisted under the program and the wider community with opportunities to participate in the
202 development or material modification of the annual plan, and an opportunity to comment on the
203 annual plan which shall include not less than 1 public hearing;

204 (6) include a report on the annual incomes of persons served in the previous year;
205 and

206 (7) include other information as may be required by the department pursuant to
207 subsection (k) to determine the effectiveness of the program.

208 j. Any report submitted pursuant to subsection (i) shall be deemed approved unless the
209 department, within 60 days of submission, issues a written disapproval because the department
210 reasonably determines, based on information contained in the report or other reliable information
211 available to the department, that the housing authority is not in compliance with the provisions of
212 this section or other applicable law.

213 k. Each housing authority shall keep such records as the department may prescribe as
214 reasonably necessary to document the amount of funds and the disposition of funds under this
215 program, to ensure compliance with the requirements of this section, and to measure
216 performance.

217 l. The department shall have access, for the purpose of audit and examination to any:
218 books; documents; papers; and records that are pertinent to assistance in connection with, and the
219 requirements of, this section; provided however, that reporting shall be conducted solely through
220 the annual report unless the department has reason to believe that the housing authority is not in
221 compliance with its program.

222 m. The auditor of the commonwealth shall have access for the purpose of audit and
223 examination to any books, documents, papers, and records that are pertinent to assistance in
224 connection with, and the requirements of, this section.

225 n. Each authority shall be evaluated by an independent evaluator twice during the initial
226 term of participation and periodically thereafter, in accordance with standards adopted by the
227 department, to determine the success of initiatives undertaken under this program in achieving
228 the purposes set forth in this section and the housing authority's plan.

229 o. The department shall establish a manner in which to post the housing innovations
230 plan, annual report, independent evaluation and other public records pertaining to each housing
231 authority's public housing innovations program established pursuant to this act so that the
232 progress of each public housing innovations program is publicly available and free to access.

233 p. The department shall establish a 9 member advisory committee whose members shall
234 include the director of the department or the director's designee, 1 representative selected by
235 Citizens' Housing and Planning Association, 1 representative selected by the Massachusetts
236 Chapter of the National Association of Housing and Redevelopment Officials, 1 representative
237 selected by the Massachusetts Union of Public Housing Tenants, 1 representative selected by the
238 Massachusetts Coalition for the Homeless, and 4 additional members chosen by the director of
239 the department to provide advice and recommendations to the department regarding regulations
240 to implement the provisions of this section and to provide ongoing assistance in determining the
241 effectiveness of the program.

242 SECTION 2. The department of housing and community development shall adopt
243 regulations implementing the provisions of this act within 90 days of the effective date of the act.
244 Except for emergency regulations adopted pursuant to section 2 of chapter 30A of the general
245 laws, any such regulation, or any amendment or repeal thereof, shall, after compliance with all
246 applicable provisions of chapter 30A except section 5, be submitted to the general court. The
247 director of the department shall file any proposed regulation, amendment or repeal with the clerk
248 of the house of representatives, together with a statement that the pertinent provisions of said
249 chapter 30A have been complied with and a summary of the regulations in layperson's terms.
250 The clerk shall refer such filing to the joint committee on housing within 5 days of the filing
251 thereof. No such regulation shall take effect until 90 days after it has been so filed; provided,
252 however, that such 90 day period shall not include days when the general court is prohibited by
253 law or rule from meeting in formal session.

254 The department shall annually report to the house and senate committees on ways and
255 means and the joint committee on housing on the participation of housing authorities in the
256 public housing innovation program.

257 SECTION 3. No more than 5 housing authorities shall participate in the public housing
258 innovation program created pursuant to section 26(b) of chapter 121B within the first 2 years of
259 enactment of this section.

260 SECTION 4. At least 180 days prior to approving the participation of more than five
261 housing authorities in the public housing innovation program authorized pursuant to section 26B

262 of chapter 121B, the department, with input by the advisory committee, shall submit to the Joint
263 Committee on Housing and the clerks of the House of Representatives and the Senate a report
264 containing a thorough evaluation of the effectiveness of the program as implemented by the
265 previously approved participants over at least a two year period. Such report shall evaluate the
266 success of the previously approved participants in fulfilling the requirements of subsections f and
267 g of said section 26B, the terms of their annual plans as required by subsection h of said section
268 26B, and in preserving or expanding the number of public housing units as compared to the
269 number that existed prior to participation in the program.