

# HOUSE . . . . . No. 1252

By Mr. Hynes of Marshfield, petition of Frank M. Hynes and Garrett J. Bradley for legislation to make laws relative to low and moderate income housing more responsive to municipalities. Housing.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT MAKING CHAPTER 40B, SO CALLED, MORE RESPONSIVE TO THE COMMONWEALTH'S CITIES AND TOWNS.

*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. Section 20 of chapter 40B of the General Laws, as  
2 appearing in the 2000 Official Edition, is hereby amended by  
3 inserting before the definition of “Low or moderate income  
4 housing”, the following definition:—  
5 “Local Housing Authority”, any housing authority within a city or  
6 town as provided under chapter 121B of the General Laws.

1 SECTION 2. Said section 20 of said chapter 40B, as so  
2 appearing, is hereby amended by striking out, in line 6, the words  
3 “or state” and inserting in place thereof the following words:—  
4 , state or local.

1 SECTION 3. The definition of “Low or moderate income  
2 housing” in said section 20 of said chapter 40B is hereby amended  
3 by adding the following sentence:— Such program shall not include  
4 any funding by the Federal Home Loan Bank.

1 SECTION 4. The definition of “Low or moderate income  
2 housing” in said section 20 of said chapter 40B, as so appearing, is  
3 hereby amended by adding the following 2 paragraphs:—  
4 In calculating a city or town’s 80 per cent threshold of low or  
5 moderate income housing stock, the department of housing and  
6 community development shall count all rental units and all units  
7 being offered for sale at market rate constructed in accordance with  
8 this chapter.

9 The sale or rental of low or moderate income housing shall be cal-  
10 culated at 40 per cent of the income of those persons whose income  
11 is 80 per cent or less of the area median income, as defined by the  
12 United States Department of Housing and Urban Development.

1 SECTION 5. The definition of “Uneconomic” in said section 20  
2 of said chapter 40B, as so appearing, is hereby amended by adding  
3 the following paragraph:—

4 The profit realized by any developer of a comprehensive permit  
5 project shall not exceed 10 per cent. In calculating the profit, the  
6 baseline acquisition cost shall be limited to either the last purchase  
7 price of a developer-owned parcel with reasonable carrying costs or  
8 the fair market value of a property that is under a purchase and sale  
9 agreement.

1 SECTION 6. Said section 20 of said chapter 40B, as so appearing,  
2 is hereby further amended by striking out, in line 31, the words  
3 “board of zoning appeals” and inserting in place thereof the  
4 following words:— planning board.

1 SECTION 7. The definition of “Consistent with local needs” in  
2 said section 20 of said chapter 40B, as so appearing, is hereby  
3 further amended by inserting after the first sentence the following 5  
4 sentences:—

5 The applicant for a comprehensive permit shall be required to list  
6 any and all waivers to local regulations, demonstrate the necessity  
7 for each waiver, the specific portion of the property to which each  
8 waiver applies and how each waiver is required to sustain the eco-  
9 nomic viability of the development proposal. Local wetland by-laws  
10 and board of health regulations may be waived by the planning  
11 board only if they apply to dimensional criteria such as setbacks, lot  
12 areas and buffer zones and only if the applicant can demonstrate that  
13 such waivers will not adversely affect the environment. The board  
14 may choose not to waive municipal sewer regulations or bylaws.  
15 The board shall not waive any regulation that will prevent the devel-  
16 opment of environmentally or physically unsuitable land. The appli-  
17 cant shall be required to establish that the subject property could  
18 physically support a conventional development of at least 35 per  
19 cent of the number of units that are proposed under the comprehen-  
20 sive permit process.

1 SECTION 8. Said section 20 of said chapter 40B, as so appearing,  
2 is hereby further amended by striking out, in line 33 the word “ten”  
3 and inserting in place thereof the following figure:— 8.

1 SECTION 9. The definition of “Consistent with local needs” in  
2 said section 20 of said chapter 40B, as so appearing, is hereby  
3 amended by adding the following paragraph:—

4 Notwithstanding the provisions of any law or regulation to the  
5 contrary, in any municipality where at least 40 per cent of the  
6 housing units for sale or rent can be occupied through conventional  
7 market based financing by households whose income does not  
8 exceed 80 per cent of the area median income, as defined by the  
9 United States Department of Housing and Urban Development, this  
10 chapter shall have no force or effect and shall not be allowed to be  
11 used to achieve any site approval pursuant to this chapter.

1 SECTION 10. Said chapter 40B is hereby further amended by  
2 inserting after section 20 the following section:—

3 Section 20A. All low and moderate income housing units  
4 included in a comprehensive permit shall have a use restriction in  
5 perpetuity and such restriction shall be recorded in the registry of  
6 deeds for the district in which the land lies or the registry district of  
7 the land court.

1 SECTION 11. Section 21 of said chapter 40B, as appearing in the  
2 2000 Official Edition, is hereby amended by striking out, in lines 3  
3 and 4, the words “board of appeals, established under section twelve  
4 of chapter forty A” and inserting in place thereof the following  
5 words:—

6 planning board established under section 70 of chapter 41.

1 SECTION 12. Said section 21 of said chapter 40B, as so  
2 appearing, is hereby further amended, by striking out, in lines 5, 9,  
3 17, 20 and 24 the words “ board of appeals” and inserting in place  
4 thereof, in each instance, the following words:—

5 planning board.

1 SECTION 13. Section 21 of said chapter 40B, as so appearing, is  
2 hereby further amended by inserting, after the second sentence the  
3 following sentence:—

4 The planning board shall be entitled to charge the applicant a  
5 reasonable fee for the cost of reviewing a comprehensive permit  
6 application in accordance with chapter 44, section 53G.

1 SECTION 14. Said section 21 of said chapter 40B, as so  
2 appearing, is hereby further amended by inserting after the third  
3 sentence, the following sentence:—

4 The planning board shall have the power to attach to said permit  
5 or approval the condition that a certain percentage of handicapped  
6 accessible units shall be built within the comprehensive permit  
7 development.

1 SECTION 15. Said section 21 of said chapter 40B, as so  
2 appearing, is hereby further amended by inserting after the fourth  
3 sentence, the following sentence:—

4 The planning board shall receive and consider evidence that the  
5 density or pace of a proposed development will unduly burden a city  
6 or town's ability to provide adequate services, including, but not  
7 limited to schools, water and sewer and other municipal services.

1 SECTION 16. Said section 21 of said chapter 40B, as so  
2 appearing, is hereby further amended by adding the following  
3 sentence:—

4 No application for a comprehensive permit shall be filed while a  
5 pending comprehensive permit application for development in the  
6 same community is under review by the planning board or the  
7 housing appeals committee.

1 SECTION 17. Said chapter 40B is hereby further amended by  
2 inserting after section 21, the following section:—

3 Section 21A. If the planning board of a city or town develops an  
4 affordable housing plan that insures that a minimum of 25 per cent  
5 of all new housing units constructed in the city or town are afford-  
6 able, including, but not limited to inclusionary, cluster and mixed  
7 use zoning provisions, and the proposal is approved by the commu-  
8 nity's legislative body, the community shall be exempt from the  
9 provisions of this chapter. If the community does not create a plan or  
10 the plan fails to make 25 per cent of its new housing construction  
11 affordable, the community shall not be exempt from this chapter.

1 SECTION 18. Section 22 of said chapter 40B, as appearing in the  
2 2000 Official Edition, is hereby amended by striking out, in lines 7  
3 and 10, the words “board of appeals” and inserting in place thereof,  
4 in each instance, the following words:— planning board.

1 SECTION 19. Section 23 of said chapter 40B, as appearing in the  
2 2000 Official Edition, is hereby amended by striking out, in lines 4,  
3 9, 23 and 30 the words, “board of appeals” and inserting in place  
4 thereof, in each instance, the following words:— planning board.

1 SECTION 20. Said Section 23 of said chapter 40B, as so  
2 appearing, is hereby further amended by inserting after the first sen-  
3 tence the following sentence:— The housing appeals committee  
4 shall consider evidence from a city or town that the density or pace  
5 of a proposed development will unduly burden that city or town's  
6 ability to provide adequate services, including, but not limited to  
7 schools, water and sewer and other municipal services.

1 SECTION 21. Said chapter 40B is hereby further amended by  
2 inserting after section 23 the following sections:—

3 Section 23A. The public agency or limited dividend or nonprofit  
4 organization proposing to build low or moderate income housing  
5 shall be required to meet with the local housing authority prior to  
6 approval by the planning board. The developer shall also pay any  
7 and all fees to the local housing authority necessary for the adminis-  
8 tration of the rental or sale of the affordable units.

9 The local housing authority shall administer the process through  
10 which affordable housing units in developments are rented or sold.  
11 The authority shall use its existing waiting lists to determine which  
12 local residents are eligible for the affordable units. In making the  
13 determination of eligibility, the authority must require a criminal  
14 offender records information check of all applicants and an annual  
15 certification of income. Those who are eligible for affordable  
16 housing shall submit to an annual recertification of income by the  
17 local housing authority.

18 Section 23B. The department of housing and community develop-  
19 ment shall promulgate regulations to implement these sections.