

HOUSE No. 4820

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 9, 2008.

The committee on Community Development and Small Business to whom were referred the petition (accompanied by bill Senate, No. 137) of Cynthia S. Creem, Frank I. Smizik, Robert S. Creedon, Jr., Jarrett T. Barrios and other members of the General Court for legislation relative to community preservation, the petition (accompanied by bill, Senate, No. 157) of Marian Walsh for legislation relative to community preservation, reports recommending that the accompanying bill (House, No. 4820) ought to pass.

For the committee,

STEVEN M. WALSH.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT RELATIVE TO COMMUNITY PRESERVATION.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to continue the commonwealth’s com-
3 mitment and partnership with cities and towns to enhance afford-
4 able housing, park and open space preservation and historic
5 preservation, therefore it is hereby declared to be an emergency
6 law, necessary for the immediate preservation of the public conve-
7 nience.

*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. Said section is hereby further amended by the def-
2 inition of “Rehabilitation” and inserting in place thereof the
3 following:—
4 “Rehabilitation”, the remodeling, reconstruction and making of
5 extraordinary repairs to historic resources, open spaces, lands for
6 recreational use and community housing, but not include mainte-
7 nance, for the purpose of making such historic resources, open
8 spaces, lands for recreational use and community housing func-
9 tional for their intended use, including but not limited to improve-
10 ments to comply with the Americans with Disabilities Act and
11 other federal, state or local building or access codes. With respect
12 to historic resources, rehabilitation shall have the additional
13 meaning of work to comply with the Standards for Rehabilitation
14 stated in the United States Secretary of the Interior’s Standards for
15 the Treatment of Historic Properties codified in 36 C.F.R. Part 68.
16 With respect to land for recreational use, rehabilitation shall
17 include the replacement of playground equipment and other cap-
18 ital improvements to the land or the facilities thereon which make
19 the land or the related facilities more functional for the related
20 recreational use.

1 SECTION 2. Section 3 of said Chapter 44B, as appearing in the
2 2004 Official Edition is hereby amended by adding after para-
3 graph (b) the following new paragraph:—

4 (b^{1/2}) As an alternative to subsection (b) of Section 3, the leg-
5 islative body may vote to accept Sections 3 to 7, inclusive, by
6 approving a surcharge on real property of not less than 1 per cent
7 of the real estate tax levy against real property, and making an
8 additional commitment of funds by dedicating revenue not greater
9 than 2 per cent of the real estate tax levy against real property,
10 provided that additional funds so committed shall come from
11 another source or sources of municipal revenue, including but not
12 limited to hotel/motel excise taxes pursuant to Chapter 64G of the
13 General Laws, linkage fee and inclusionary zoning payments,
14 however authorized, the sale of municipal property pursuant to
15 Section 3 of Chapter 40 of the General Laws, parking fines and
16 surcharges pursuant to Sections 20, 20A, and 20A^{1/2} of Chapter 90
17 of the General Laws, existing dedicated housing, open space and
18 historic preservation funds, however authorized, and provided fur-
19 ther that additional funds so committed shall not include any fed-
20 eral funds or funds from private sources, provided that
21 inclusionary zoning payments and linkage fees shall be considered
22 public funds for the purposes of this chapter. The total funds com-
23 mitted to the Community Preservation Act under this subsection
24 shall not exceed 3% of the real estate tax levy against real prop-
25 erty, less exemptions adopted.

26 In the event that the municipality shall no longer dedicate all or
27 part of the additional funds to community preservation, the sur-
28 charge of not less than 1 per cent shall remain in effect, but may
29 be reduced pursuant to Section 16.

1 SECTION 3. Section 3 of said Chapter 44B is hereby amended
2 by inserting after paragraph d(3) the following new paragraph:—

3 (4) for \$100,000 of the value of each taxable parcel of class
4 three, commercial, and class four, industrial, property as defined
5 in Section 2A of said Chapter 59.

1 SECTION 4. Section 5 of the Chapter 44B, as most recently
2 amended by Chapter 289 of the Acts of 2006 is hereby amended

3 by striking paragraph (b)(2) in its entirety and inserting in place
4 thereof the following:—

5 (2) The community preservation committee shall make recom-
6 mendations periodically throughout the year, or as a single yearly
7 recommendation to the legislative body for the acquisition, cre-
8 ation and preservation of open space; for the acquisition, preser-
9 vation, rehabilitation and restoration of historic resources; for the
10 acquisition, creation, preservation, rehabilitation and restoration
11 of land for recreational use; for the acquisition, creation, preserva-
12 tion and support of community housing; and for the rehabilitation
13 or restoration of open space and community housing that is
14 acquired or created as provided in this section. With respect to
15 community housing, the community preservation committee shall
16 recommend, wherever possible, the reuse of existing buildings or
17 construction of new buildings on previously developed sites. With
18 respect to recreational use, the acquisition of artificial turf for ath-
19 letic fields shall be prohibited.

1 SECTION 5. Said Section 5 is further amended by striking
2 paragraph (d) and inserting in place thereof the following:—

3 (d) After receiving such recommendations from the community
4 preservation committee or capital improvement plan submitted
5 pursuant section (5), the legislative body shall then take such
6 action and approve such appropriations from the Community
7 Preservation Fund as set forth in Section 7, and such additional
8 non CPA appropriations as it deems appropriate to carry out the
9 recommendations of the community preservation committee. In
10 the case of a city, the ordinance shall provide for the mechanisms
11 under which the legislative body may approve and veto appropria-
12 tions made pursuant to this chapter, in accordance with the city
13 charter.

1 SECTION 6. Section 6 of Chapter 44B is hereby amended by
2 striking it in its entirety and inserting in place thereof the
3 following:—

4 Section 6. In every fiscal year and upon the recommendation of
5 the community preservation committee, the legislative body shall
6 spend, or set aside for later spending, not less than 10 per cent of
7 the annual revenues in the Community Preservation Fund for open

8 space, not less than 10 per cent of the annual revenues for historic
9 resources and not less than 10 per cent of the annual revenues for
10 community housing. In each fiscal year, the legislative body shall
11 make such appropriations from the Community Preservation Fund
12 as it deems necessary for the administrative and operating
13 expenses of the community preservation committee, but the
14 appropriations shall not exceed 5 per cent of the annual revenues
15 in the Community Preservation Fund. The legislative body may
16 also make such appropriations from the Community Preservation
17 Fund as it deems necessary for direct costs associated with a
18 municipality's first year implementation, including but not limited
19 to tax billing software or hiring outside vendors, provided that the
20 total of any administrative and operating expense of the Commu-
21 nity Preservation Committee and the first year implementation
22 expenses do not exceed five per cent of the annual revenues in the
23 Community Preservation Fund.

24 Funds that are set aside shall be held in the Community Preser-
25 vation Fund and spent in that year or later years, but funds set
26 aside for a specific purpose shall be spent only for the specific
27 purpose. Any funds set aside may be expended in any city or town
28 in the Commonwealth. The community preservation funds shall
29 not replace existing operating funds, only augment them.

1 SECTION 7. The second paragraph of Section 7 of Chapter
2 44B is amended by striking the first sentence and
3 inserting in place thereof the following:—

4 “The following monies shall be deposited in the fund:— (a) all
5 funds collected from the real property surcharge or bond proceeds
6 in anticipation of revenue pursuant to sections 4 and 11; (b) if
7 applicable, additional funds appropriated or dedicated from allow-
8 able municipal sources pursuant to subsection (c) of section 3; (c)
9 all funds received from the commonwealth or any other source for
10 such purposes; and (d) proceeds from the disposal of real property
11 acquired with funds from the Community Preservation Fund.”

1 SECTION 8. Section 8 of Chapter 44B is hereby amended by
2 striking it in its entirety and inserting in place thereof the
3 following:—

4 Section 8. (a) The fees of the registers of deeds, except as oth-
5 erwise provided, to be paid when the instrument is left for
6 recording, filing or deposit shall be subject to a surcharge of \$20.
7 The fees for so recording, filing or depositing a municipal lien
8 certificate shall be subject to a surcharge of \$10. The surcharges
9 shall be imposed for the purposes of community preservation. No
10 surcharge shall apply to a declaration of homestead under Chapter
11 188. No surcharge shall apply to the fees charged for additional
12 pages, photostatic copies, abstract cards, additional square feet for
13 the filing and recording of plans or for additional or required mar-
14 ginal references.

15 (b) The fees of the assistant recorder, except as otherwise pro-
16 vided, to be paid when the instrument is left for registering, filing
17 or entering with respect to registered land shall be subject to a sur-
18 charge of \$20. The fees for so registering, filing or entering a
19 municipal lien certificate shall be subject to a surcharge of \$10.
20 The surcharges shall be imposed for the purposes of community
21 preservation. No surcharge shall apply to a declaration of home-
22 stead of Chapter 188. No surcharge shall apply to the fees charged
23 for additional lots shown on plans, for indexing instruments
24 recorded while a petition for registering is pending, for additional
25 certificates of sewer assessments, for old age assistance liens, for
26 duplicates and for photocopies.

27 (c) Notwithstanding subsections (a) and (b) of Section 8, in the
28 event that the Massachusetts Community Preservation Trust Fund
29 balance is insufficient to support a 75% first round match distribu-
30 tion pursuant to section 10 for all cities and towns that have
31 accepted Sections 3 to 7 inclusive, as certified by the commis-
32 sioner of revenue on October 1st of each year, the fees of the reg-
33 istry of deeds and fees of the assistant recorder to be paid when
34 the instrument is left for recording, filing or deposit and the fee
35 for so recording, filing or depositing a municipal lien certificate
36 shall be subject to a surcharge to be determined by the commis-
37 sioner of the department of revenue necessary to support, by the
38 commissioner's best reasonable estimate, a 75% first round match
39 for the following fiscal year, with each fee rounded to the nearest
40 dollar.

41 Under no circumstances shall each fee surcharge to be paid to
42 the register of deeds or assistant recorder when the instrument is

43 left for recording, filing or deposit for community preservation be
44 greater than \$70. Under no circumstances shall each fee surcharge
45 paid to the register of deeds or assistance record for so recording,
46 filing or depositing a municipal lien certificate for community
47 preservation be greater than \$40.

48 The surcharges shall be imposed for the purposes of community
49 preservation. No community preservation surcharges shall apply
50 to a declaration of homestead under Chapter 188. No surcharge
51 shall apply to the fees charged for additional pages, photostatic
52 copies, abstract cards, additional square feet for the filing and
53 recording of plans or for additional or required marginal refer-
54 ences.

55 (d) Each fiscal year, the commissioner of the department of rev-
56 enue shall certify the fees pursuant to section 8. The commis-
57 sioner of revenue shall notify the registers of deeds, the assistant
58 recorders, and the joint committee on revenue of the change at
59 least ninety days prior to the first day of the fiscal year.

60 (e) All surcharges on fees collected pursuant to this section
61 shall be forwarded to the Massachusetts Community Preservation
62 Trust Fund, established in Section 9.

1 SECTION 9. Paragraph (c) of Section 9 of said Chapter 44B is
2 hereby amended by striking said paragraph and inserting in place
3 therefore the following:—

4 “(c) The state treasurer shall make all disbursements and
5 expenditures from the fund without further appropriation, as
6 directed by the commissioner of revenue in accordance with said
7 section 10. The department of revenue shall report by source all
8 amounts credited to said fund and all expenditures from said fund.
9 The commissioner of revenue shall assign personnel of the depart-
10 ment as it may need to administer and manage the fund disburse-
11 ments and any expense incurred by the department for such
12 purposes and any expense incurred by the registers of deeds and
13 the assistant recorder to administer and collect the surcharges pur-
14 suant to section 8 shall be deemed an operating and administrative
15 expense of the program. The commissioner of revenue shall annu-
16 ally on October 15th direct the state treasurer to disburse an
17 amount not to exceed one-half of one per cent of the annual total
18 revenue received in the preceding fiscal year from a register of

19 deeds or an assistant recorder pursuant to the provisions of
20 Section 8 to such register of deeds or assistant recorder to pay
21 operating and administrative expenses of the program certified to
22 the commissioner by the register of deeds or assistant recorder and
23 to disburse an amount not to exceed 5 per cent of the annual total
24 revenue received by the state treasurer in the preceding fiscal year
25 under the provisions of said Section 8 to the department of rev-
26 enue to pay total operating and administrative expenses of the pro-
27 gram.”

1 SECTION 10. Section 10 of Chapter 44B is amended by
2 striking it in its entirety and inserting in place thereof the
3 following:—

4 Section 10. (a) The commissioner of revenue shall annually on
5 October 15 disburse monies from the fund established in section 9
6 to cities and towns that have accepted sections 3 to 7, inclusive,
7 and notified the commissioner of their acceptance. The commu-
8 nity shall notify the commissioner of the date and terms on which
9 the voters accepted said Sections 3 to 7, inclusive. The municipal
10 tax collecting authority shall certify to the commissioner the
11 amount the municipality has raised through June 30 by imposing a
12 surcharge on its real property levy and shall certify the percentage
13 of the surcharge applied. In the event a municipality accepts this
14 act pursuant to subsection b½ of Section 3, the municipal tax col-
15 lecting authority shall certify to the commissioner by October
16 30th, the maximum additional funds the municipality intends to
17 transfer to the Community Preservation Fund from allowable
18 municipal sources for the following fiscal year. Once certified, the
19 municipality may choose to transfer less than the certified amount
20 during the fiscal year.

21 (b) The commissioner shall multiply the amount remaining in
22 the fund after any disbursements for operating and administrative
23 expenses pursuant to section 9(c) by 80 per cent. This amount dis-
24 tributed in the first round distribution shall be known as the match
25 distribution. The first round total shall be distributed to each city
26 or town accepting said Sections 3 to 7, inclusive, in an amount not
27 less than 75 per cent but not greater than 100 per cent of the total
28 amount raised by the additional surcharge on real property by
29 each city or town and if applicable the additional funds committed

30 from allowable municipal sources pursuant to subsection (c) of
31 Section 3. The percentage shall be the same for each city and town
32 and shall be determined by the commissioner annually in a
33 manner that distributes the maximum amount available to each
34 participating city or town.

35 (c) The commissioner shall further divide the remaining 20 per
36 cent of the fund in a second round distribution, known as the
37 equity distribution. The commissioner shall determine the equity
38 distribution in several steps. The first step shall be to divide the
39 remaining 20 per cent of the fund by the number of cities and
40 towns that have accepted said Sections 3 to 7, inclusive. This divi-
41 dend shall be known as the base figure for equity distribution.
42 This base figure shall be determined solely for purposes of per-
43 forming the calculation for equity distribution and shall not be
44 added to the amount received by a participant.

45 (d) Each city and town in the commonwealth shall be assigned
46 a community preservation rank for purposes of the equity distribu-
47 tion. The commissioner shall determine each community's rank by
48 first determining the municipality's equalized property valuation
49 per capita ranking, ranking municipalities from highest to lowest
50 valuation. The commissioner shall also determine the population
51 of each municipality and rank each from largest to smallest in
52 population. The commissioner shall add each equalized property
53 valuation rank and population rank, and divide the sum by two.
54 The dividend is the community preservation raw score for that
55 municipality.

56 (e) The commissioner shall then order each municipality by CP
57 raw score, from the lowest raw score to the highest raw score.
58 This order shall be the CP rank for each municipality. If more than
59 one municipality has the same CP raw score, the municipality
60 with the higher equalized valuation rank shall receive the higher
61 CP rank.

62 (f) After determining the CP rank for each municipality in the
63 Commonwealth, the commissioner shall divide all municipalities
64 into deciles according to their CP ranking, with approximately the
65 same number of municipalities in each decile, and with the munic-
66 ipalities with the highest CP rank shall be placed in the lowest
67 decile category, starting with decile 10. Percentages shall be
68 assigned to each decile as follows:—

69	decile 1	140 per cent of the base figure
70	decile 2	130 per cent of the base figure
71	decile 3	120 per cent of the base figure
72	decile 4	110 per cent of the base figure
73	decile 5	100 per cent of the base figure
74	decile 6	90 per cent of the base figure
75	decile 7	80 per cent of the base figure
76	decile 8	70 per cent of the base figure
77	decile 9	60 per cent of the base figure
78	decile 10	50 per cent of the base figure

79 After assigning each municipality to a decile according to their
80 CP rank, the commissioner shall multiply the percentage assigned
81 to that decile by the base figure to determine the second round
82 equity distribution for each participant.

83 (f) Notwithstanding any other provision of this section, the total
84 state contribution for each city or town shall not exceed the actual
85 amount raised by the municipality's surcharge on its real property
86 levy, and if applicable, additional funds committed from allowable
87 municipal sources pursuant to subsection b(½) of Section 3.

88 (g) When there are monies remaining in the trust fund after the
89 first and second round distributions, and any necessary adminis-
90 trative expenses have been paid in accordance with Section 6, the
91 commissioner may conduct a third round surplus distribution. Any
92 remaining surplus in the fund may be distributed by dividing the
93 amount of the surplus by the number of cities and towns that have
94 accepted this chapter. The resulting dividend shall be the surplus
95 base figure. The commissioner shall then use the decile categories
96 and percentages as defined in this section to determine a surplus
97 equity distribution for each participant.

98 (h) The commissioner shall determine each participant's total
99 state grant by adding the amount received in the first round distri-
100 bution with the amounts received in any later round or rounds of
101 distributions, with the exception of a city or town that has already
102 received a grant equal to 100 per cent of the amount the commu-
103 nity raised by its surcharge on its real property levy.

104 (1) Only those cities and towns that adopt the maximum sur-
105 charge pursuant to subsection (b) of section (3) and those cities
106 and towns that adopt the maximum surcharge and additional funds
107 committed from allowable municipal sources such that the total

108 funds are the equivalent of 3 per cent of the real estate tax levy
109 against real property pursuant to subsection (b $\frac{1}{2}$) of Section 3 of
110 this chapter shall be eligible to receive additional state monies
111 through the equity and surplus distributions.

112 (2) If less than 10 per cent of the cities and towns in the Com-
113 monwealth have accepted Sections 3 to 7, inclusive, and imposed
114 and collected a surcharge on their real property levy, the commis-
115 sioner may calculate the state grant with only one round of distrib-
116 utions, or in any other equitable manner.

117 (j) After distributing the trust fund in accordance with this
118 section, the commissioner shall keep any remaining funds in the
119 trust for distribution in the following year.

1 SECTION 11. Paragraph (b) of Section 12 of said Chapter 44B
2 is hereby amended by inserting the following after the final sen-
3 tence:—

4 In the event that there is a deed restriction placed on any real
5 property pursuant to this chapter, the legislative body is autho-
6 rized to appropriate monies from the Community Preservation
7 Fund to pay a non-profit organization created pursuant to Chapter
8 180 to hold, monitor and enforce the deed restriction on said prop-
9 erty.

1 SECTION 12. Paragraph (b) of Section 12 of said Chapter 44B
2 is hereby amended by striking it in its entirety and inserting in
3 place thereof the following:—

4 (b) Real property interests acquired under this chapter shall be
5 owned and managed by the city or town, but the legislative body
6 may delegate management of such property to the conservation
7 commission, the historical commission, the board of park com-
8 missioners or the housing authority, or, in the case of interests to
9 acquire sites for future wellhead development by a water district,
10 a water supply district or a fire district. The legislative body may
11 also delegate management of such property to a nonprofit organi-
12 zation created under Chapter 180 or Chapter 203. The legislative
13 body may also transfer ownership of such property acquired under
14 this chapter to a nonprofit organization created under Chapter 180
15 or Chapter 203, provided that in the event of such a transfer, the
16 municipality shall retain a deed restriction pursuant to Chapter

17 184 to maintain the property for the purpose it was authorized to
18 be acquired for by the legislative body The legislative body may
19 appropriate monies necessary to transfer ownership of a property
20 between two entities so long as a deed restriction is acquired and
21 maintained by the town or city.

1 SECTION 13. Section 16 of said Chapter 44B is hereby
2 amended by striking paragraph (a) and inserting in place thereof
3 the following:—

4 (a) At any time after imposition of the surcharge, the legislative
5 body may approve and the voters may accept an amendment to the
6 amount and computation of the surcharge, or to the amount of
7 exemption or exemptions, in the same manner and within the limi-
8 tations set forth in this chapter, including reducing the surcharge
9 to 1 per cent and committing additional municipal funds pursuant
10 to subsection (b½) of Section 3.

1 SECTION 14. Section 38 of Chapter 262 of the General Laws,
2 as appearing in the 1998 Official Edition, is hereby amended by
3 adding the following paragraph:—

4 The fees of the registers of deeds, except as otherwise provided,
5 to be paid when the instrument is left for recording, filing or
6 deposit shall be subject to a surcharge under Section 8 of
7 Chapter 44B.

1 SECTION 15. Section 39 of said Chapter 262, as so appearing,
2 is hereby amended by adding the following paragraph:—

3 The fees of the assistant recorder, except as otherwise provided,
4 to be paid when the instrument is left for registering, filing or
5 entering with respect to registered land shall be subject to a sur-
6 charge under Section 8 of Chapter 44B.

1 SECTION 16. Notwithstanding any general or special law to
2 the contrary, this Act shall apply to all Community Preservation
3 Fund appropriations approved by a city or town's legislative body
4 on or after the effective date of acceptance of the Community
5 Preservation Act in such city or town.”