

SENATE NO. 137



AN ACT RELATIVE TO COMMUNITY PRESERVATION

*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 2 of Chapter 44B of the General Laws, as most recently amended by Chapter
2 38 of the Acts of 2006 is hereby amended by striking the definition of "Recreational Use" and
3 inserting in place thereof the following:-

4 "Recreational use", any outdoor active or passive recreational use including, but not limited to, the
5 use of land for community gardens, trails, and noncommercial youth and adult sports, parks,
6 playgrounds or athletic fields, and any buildings structures, appurtenances or other facilities
7 necessary or desired to support any such recreational use, including, but not limited to restrooms,
8 storage facilities, parking facilities, refreshment stands and lighting. "Recreational use" shall not
9 include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

10 SECTION 2. Said section is hereby further amended by the definition of "Rehabilitation" and
11 inserting in place thereof the following:-

12 "Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to historic
13 resources, open spaces, lands for recreational use and community housing for the purpose of
14 making such historic resources, open spaces, lands for recreational use and community housing
15 functional for their intended use, including but not limited to improvements to comply with the
16 Americans with Disabilities Act and other federal, state or local building or access codes. With
17 respect to historic resources, rehabilitation shall have the additional meaning of work to comply
18 with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards
19 for the Treatment of Historic Properties codified in 36 C.F.R. Part 68. With respect to land for
20 recreational use, rehabilitation shall include the installation of artificial turf, the replacement of
21 playground equipment and other capital improvements to the land or the facilities thereon which
22 make the land or the related facilities more functional for the related recreational use.

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

25 (b1/2) As an alternative to subsection (b) of section 3, the legislative body may vote to accept
26 sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of
27 the real estate tax levy against real property, and making an additional commitment of funds by
28 dedicating revenue not greater than 2 per cent of the real estate tax levy against real property,
29 provided that additional funds so committed shall come from another source or sources of
30 municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter 64G of
31 the general laws, linkage fee and inclusionary zoning payments, however authorized, the sale of

32 municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines and
33 surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws, existing
34 dedicated housing, open space and historic preservation funds, however authorized, and provided
35 further that additional funds so committed shall not include any federal funds or funds from private
36 sources, provided that inclusionary zoning payments and linkage fees shall be considered public
37 funds for the purposes of this chapter. The total funds committed to the Community Preservation
38 Act under this subsection shall not exceed 3% of the real estate tax levy against real property.
39 Neither the amount of the surcharge nor the additional funds so committed shall be included in the
40 calculation of total taxes assessed for purposes of section 21C of chapter 59.

41 In the event that the municipality shall no longer dedicate all or part of the additional funds to
42 community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be
43 reduced pursuant to section 16.

44 SECTION 4. Section 4 of said chapter 44B is hereby amended by inserting after paragraph (b) the
45 following new paragraph:-

46 “(b 1/2) For each municipality that accepts sections 3 to 7, inclusive, pursuant to the provisions set
47 forth in subsection (b 1/2) of section 3, each municipality shall place any additional revenue sources
48 appropriated or dedicated for the purposes of community preservation pursuant to subsection (b 1/2)
49 of section 3 in the Community Preservation Fund pursuant to section 7.

50 SECTION 5. Section 5 of the Chapter 44B, as most recently amended by Chapter 289 of the Acts
51 of 2006 is hereby amended by striking paragraph (b)(2) in its entirety and inserting in place thereof
52 the following:-

53 (2) The community preservation committee shall make recommendations periodically throughout
54 the year, or as a single yearly recommendation to the legislative body for the acquisition, creation
55 and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of
56 historic resources; for the acquisition, creation, preservation, rehabilitation and restoration of land
57 for recreational use; for the acquisition, creation, preservation and support of community housing;
58 and for the rehabilitation or restoration of open space, and community housing that is acquired or
59 created as provided in this section. In the case of a city with a duly authorized capital improvement
60 plan, the community preservation committee may make recommendations to the mayor or city
61 manager to submit the recommendation to the legislative body as part of the municipal capital
62 improvement plan. With respect to community housing, the community preservation committee
63 shall recommend, wherever possible, the reuse of existing buildings or construction of new
64 buildings on previously developed sites.

65 SECTION 6. Said Section 5 is further amended by striking paragraph (d) and inserting in place
66 thereof the following:-

67 (d) After receiving such recommendations from the community preservation committee, the
68 legislative body shall then take such action and approve by a majority vote such appropriations
69 from the Community Preservation Fund as set forth in section 8, and such additional non CPA
70 appropriations as it deems appropriate to carry out the recommendations of the community
71 preservation committee. In the case of a city, the city charter shall provide for the mechanisms
72 under which the legislative body may veto appropriations.

73 SECTION 7. Section 6 of Chapter 44B is hereby amended by striking it in its entirety and inserting
74 in place thereof the following:-

75 Section 6. In every fiscal year and upon the recommendation of the community preservation
76 committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent
77 of the annual revenues in the Community Preservation Fund for open space but not regular
78 maintenance, not less than 10 per cent of the annual revenues for historic resources and not less
79 than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative
80 body shall make such appropriations from the Community Preservation Fund as it deems necessary
81 for the administrative and operating expenses of the community preservation committee, but the
82 appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation
83 Fund. Direct costs associated with implementing the surcharge in the first year, such as upgrades to
84 tax billing software or hiring outside vendors, may be reimbursed. In the event that there is a deed
85 restriction on any real property resulting from the acquisition, creation, preservation, rehabilitation
86 and support of any property pursuant to this chapter, the legislative body is authorized to
87 appropriate monies from the Community Preservation Fund to pay a non-profit organization created
88 pursuant to Chapter 180 for the purposes of enforcing the required deed restriction on said
89 property.

90 Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or
91 later years, but funds set aside for a specific purpose shall be spent only for the specific purpose.
92 Any funds set aside may be expended in any city or town in the commonwealth. The community
93 preservation funds shall not replace existing operating funds, only augment them.

94 SECTION 8. The second paragraph of Section 7 of Chapter 44B is amended by amended by
95 striking the first sentence and inserting in place thereof the following:-

96 “The following monies shall be deposited in the fund: (a) all funds collected from the real property
97 surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b) if
98 applicable, additional funds appropriated or dedicated from allowable municipal sources pursuant to
99 subsection (c) of section 3; (c) all funds received from the commonwealth or any other source for
100 such purposes; and (d) proceeds from the disposal of real property acquired with funds from the
101 Community Preservation Fund.”

102 SECTION 9. Section 8 of Chapter 44B is hereby amended by striking it in its entirety and inserting
103 in place thereof the following:-

104 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when the
105 instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The fees for
106 so recording, filing or depositing a municipal lien certificate shall be subject to a surcharge of \$10.
107 The surcharges shall be imposed for the purposes of community preservation. No surcharge shall
108 apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged
109 for additional pages, photostatic copies, abstract cards, additional square feet for the filing and
110 recording of plans or for additional or required marginal references.

111 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument
112 is left for registering, filing or entering with respect to registered land shall be subject to a surcharge
113 of \$20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a
114 surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No
115 surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the
116 fees charged for additional lots shown on plans, for indexing instruments recorded while a petition

117 for registering is pending, for additional certificates of sewer assessments, for old age assistance
118 liens, for duplicates and for photocopies.

119 (c) Notwithstanding subsections (a) and (b) of section 8, in the event that the Massachusetts
120 Community Preservation Trust Fund balance is insufficient to support a 75% match distribution
121 pursuant to section 10 for all cities and towns that have accepted sections 3 to 7 inclusive, as
122 certified by the commissioner of revenue on October 1st of each year, the fees of the registry of
123 deeds and fees of the assistant recorder to be paid when the instrument is left for recording, filing or
124 deposit and the fee for so recording, filing or depositing a municipal lien certificate shall be subject
125 to a surcharge to be determined by the commissioner of the department of revenue necessary to
126 support, by the commissioner's best reasonable estimate, a 75% match for the following fiscal year,
127 with each fee rounded to the nearest dollar.

128 Under no circumstances shall each fee surcharge to be paid to the register of deeds or assistant
129 recorder when the instrument is left for recording, filing or deposit for community preservation is
130 greater than \$70. Under no circumstances shall each fee surcharge paid to the register of deeds or
131 assistance record for so recording, filing or depositing a municipal lien certificate for community
132 preservation is greater than \$40.

133 The surcharges shall be imposed for the purposes of community preservation. No community
134 preservation surcharges shall apply to a declaration of homestead under chapter 188. No surcharge
135 shall apply to the fees charged for additional pages, photostatic copies, abstract cards, additional
136 square feet for the filing and recording of plans or for additional or required marginal references.

137 (d) Each fiscal year, the commissioner of the department of revenue shall certify the fees pursuant
138 to section 8. The commissioner of revenue shall notify the registers of deeds, the assistant
139 recorders, and the joint committee on revenue of the change at least ninety days prior to the first day
140 of the fiscal year.

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

143 SECTION 10. Paragraph (c) of Chapter 44B is hereby amended by striking said paragraph and
144 inserting in place therefore the following:-

145 “(c) The state treasurer shall make all disbursements and expenditures from the fund without further
146 appropriation, as directed by the commissioner of revenue in accordance with said section 10. The
147 department of revenue shall report by source all amounts credited to said fund and all expenditures
148 from said fund. The commissioner of revenue shall assign personnel of the department as it may
149 need to administer and manage the fund disbursements and any expense incurred by the department
150 for such purposes and any expense incurred by the registers of deeds and the assistant recorder to
151 administer and collect the surcharges pursuant to section 8 shall be deemed an operating and
152 administrative expense of the program. The commissioner of revenue shall annually on October 15th
153 direct the state treasurer to disburse an amount not to exceed one-half of one per cent of the annual
154 total revenue received in the preceding fiscal year from a register of deeds or an assistant recorder
155 pursuant to the provisions of section 8 to such register of deeds or assistant recorder to pay
156 operating and administrative expenses of the program certified to the commissioner by the register
157 of deeds or assistant recorder and to disburse an amount not to exceed 5 per cent of the annual total
158 revenue received by the state treasurer in the preceding fiscal year under the provisions of said

159 section 8 to the department of revenue to pay total operating and administrative expenses of the
160 program.”

161 SECTION 11. Section 10 of Chapter 44B is amended by striking it in its entirety and inserting in
162 place thereof the following:-

163 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies from
164 the fund established in section 9 to cities and towns that have accepted sections 3 to 7, inclusive,
165 and notified the commissioner of their acceptance. The community shall notify the commissioner of
166 the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax
167 collecting authority shall certify to the commissioner the amount the municipality has raised
168 through June 30 by imposing this surcharge and if applicable, the additional funds committed from
169 allowable municipal sources pursuant to subsection (c) of section 3.

170 (b) The commissioner shall multiply the amount remaining in the fund after any disbursements for
171 operating and administrative expenses pursuant to section 9(c) by 80 per cent. This amount
172 distributed in the first round distribution shall be known as the match distribution. The first round
173 total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount
174 not less than 25 per cent but not greater than 100 per cent of the total amount raised by the
175 additional surcharge on real property by each city or town and if applicable the additional funds
176 committed from allowable municipal sources pursuant to subsection (c) of section 3. The
177 percentage shall be the same for each city and town and shall be determined by the commissioner
178 annually in a manner that distributes the maximum amount available to each participating city or
179 town.

180 (c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round
181 distribution, known as the equity distribution. The commissioner shall determine the equity
182 distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund
183 by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend
184 shall be known as the base figure for equity distribution. This base figure shall be determined solely
185 for purposes of performing the calculation for equity distribution and shall not be added to the
186 amount received by a participant.

187 (d) Each city and town in the commonwealth shall be assigned a community preservation rank for
188 purposes of the equity distribution. The commissioner shall determine each community's rank by
189 first determining the municipality's equalized property valuation per capita ranking, ranking
190 municipalities from highest to lowest valuation. The commissioner shall also determine the
191 population of each municipality and rank each from largest to smallest in population. The
192 commissioner shall add each equalized property valuation rank and population rank, and divide the
193 sum by two. The dividend is the community preservation raw score for that municipality.

194 (e) The commissioner shall then order each municipality by CP raw score, from the lowest raw
195 score to the highest raw score. This order shall be the CP rank for each municipality. If more than
196 one municipality has the same CP raw score, the municipality with the higher equalized valuation
197 rank shall receive the higher CP rank.

198 (f) After determining the CP rank for each municipality in the commonwealth, the commissioner
199 shall divide all municipalities into deciles according to their CP ranking, with approximately the
200 same number of municipalities in each decile, and with the municipalities with the highest CP rank

201 shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned
202 to each decile as follows:

decile 1	140 per cent of the base figure
decile 2	130 per cent of the base figure
decile 3	120 per cent of the base figure
decile 4	110 per cent of the base figure
decile 5	100 per cent of the base figure
decile 6	90 per cent of the base figure
decile 7	80 per cent of the base figure
decile 8	70 per cent of the base figure
decile 9	60 per cent of the base figure
decile 10	50 per cent of the base figure

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

206 (f) Notwithstanding any other provision of this section, the total state contribution for each city or
207 town shall not exceed the actual amount raised by the municipality's surcharge on its real property
208 levy, and if applicable, additional funds committed from allowable municipal sources pursuant to
209 subsection (c) of section 3.

210 (g) When there are monies remaining in the trust fund after the first and second round distributions,
211 and any necessary administrative expenses have been paid in accordance with section 6, the
212 commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund
213 may be distributed by dividing the amount of the surplus by the number of cities and towns that
214 have accepted this chapter. The resulting dividend shall be the surplus base figure. The
215 commissioner shall then use the decile categories and percentages as defined in this section to
216 determine a surplus equity distribution for each participant.

217 (h) The commissioner shall determine each participant's total state grant by adding the amount
218 received in the first round distribution with the amounts received in any later round or rounds of
219 distributions, with the exception of a city or town that has already received a grant equal to 100 per
220 cent of the amount the community raised by its surcharge on its real property levy.

221 (1) Only those cities and towns that adopt the maximum surcharge allowed by this chapter shall be
222 eligible to receive additional state monies through the equity and surplus distributions.

223 (2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to
224 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner
225 may calculate the state grant with only one round of distributions, or in any other equitable manner.

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

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

230 (b) Real property interests acquired under this chapter shall be owned and managed by the city or
231 town, but the legislative body may delegate management of such property to the conservation
232 commission, the historical commission, the board of park commissioners or the housing authority,
233 or, in the case of interests to acquire sites for future wellhead development by a water district, a
234 water supply district or a fire district. The legislative body may also delegate management of such
235 property to a nonprofit organization created under chapter 180 or chapter 203. The legislative body
236 may also transfer ownership of such property acquired under this chapter to a nonprofit
237 organization created under chapter 180 or chapter 203, provided that in the event of such a transfer,
238 the municipality shall retain a deed restriction pursuant to Chapter 184 to maintain the property for
239 the purpose it was authorized to be acquired for by the legislative body. The legislative body may
240 provide monies to make an ownership transfer possible between two entities as long as a deed
241 restriction is acquired by the town or city. A private individual or individuals, again may eventually
242 own such real property, if the town or city holds the deed restriction.

243 SECTION 13. Section 16 of said Chapter 44B is hereby amended by striking paragraph (a) and
244 inserting in place thereof the following:-

245 (a) At any time after imposition of the surcharge, the legislative body may approve and the voters
246 may accept an amendment to the amount and computation of the surcharge, or to the amount of
247 exemption or exemptions, in the same manner and within the limitations set forth in this chapter,
248 including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant
249 to subsection (b 1/2) of section 3.

250 SECTION 14. Section 17 of said Chapter 44B is amended in line 2 by striking the word “effect”
251 and inserting in place thereof the word “affect”.

252 SECTION 15. Section 38 of chapter 262 of the General Laws, as appearing in the 1998 Official
253 Edition, is hereby amended by adding the following paragraph: -

254 The fees of the registers of deeds, except as otherwise provided, to be paid when the instrument is
255 left for recording, filing or deposit shall be subject to a surcharge under section 8 of chapter 44B.

256 SECTION 16. Section 39 of said chapter 262, as so appearing, is hereby amended by adding the
257 following paragraph: -

258 The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is
259 left for registering, filing or entering with respect to registered land shall be subject to a surcharge
260 under section 8 of chapter 44B.

261 SECTION 17. Notwithstanding any general or special law to the contrary, this Act shall apply to
262 all Community Preservation Fund appropriations approved by a city or town's legislative body on
263 or after the effective date of acceptance of the Community Preservation Act in such city or town."