

SENATE NO. 157



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 appearing in the 2004 Official
2 Edition, is hereby amended by inserting after the word “destruction,” in line 54, the following
3 words: - including but not limited to capital improvements necessary to extend the useful life of
4 the property and to thereby prevent the property from deteriorating or falling into disrepair,

5 SECTION 2. Said chapter 44B, as so appearing, is hereby amended by inserting after said
6 section 2 of said chapter 44B the following section: -

7 Section 2A. The general court hereby finds that there is a critical need to protect and
8 preserve the fundamental character of the communities of the commonwealth which are
9 currently at risk as a result of the loss of open space and park land, the loss and deterioration of
10 historic resources and the inadequate supply of decent and affordable housing for persons and

11 families of low and moderate income. The disproportionately high value of real estate
12 throughout the commonwealth has resulted in market incentives to develop open spaces, to
13 construct new buildings in place of older historic buildings, and to build high-priced residential
14 housing; it has resulted in sprawl into previously undeveloped areas of the commonwealth at the
15 expense of open spaces and historic resources in the urban centers of the commonwealth; and it
16 has resulted in increased housing costs and the inability of persons and families of low and
17 moderate income to obtain decent and affordable housing in the community in which they are
18 personally connected and invested. The loss of open space and park land, the loss and
19 deterioration of historic resources and the lack of affordable housing for persons and families of
20 low and moderate income threaten the fundamental character of cities and towns throughout the
21 commonwealth; they threaten the right of the citizens of such cities and towns to clean air and
22 water, to freedom from excessive and unnecessary noise, to the natural scenic, historic and
23 esthetic qualities of their environment and to the conservation and utilization of their
24 agricultural, forest, water, air and other natural resources; they threaten the ability of the citizens
25 of such cities and towns to congregate and to recreate as a community in open spaces and park
26 lands; they threaten the historical, archeological, architectural, and cultural character of cities
27 and towns; they threaten the socio-economic diversity of cities and towns throughout the
28 commonwealth and the accommodation of persons and families of low and moderate income
29 who make significant contributions to the well-being and character of the cities and towns; and
30 for all of these reasons, they threaten the strength, richness, well-being, diversity, and
31 uniqueness of each of the cities and towns throughout the commonwealth.

32 It is hereby further found that in cities and towns throughout the commonwealth there is
33 an inadequate supply of decent and affordable rental housing and housing which provides an

34 opportunity for home ownership, either directly or through a condominium or cooperative form
35 of ownership, for persons and families of low and moderate income. The high cost of land and
36 buildings as well as restrictive zoning and other approvals has produced a critical shortage of
37 adequate housing in the commonwealth adversely affecting the economy of the commonwealth
38 and the well-being of its cities and towns and of its residents. Private enterprise without the
39 assistance contemplated by this act cannot achieve the creation or preservation of an adequate
40 supply of housing for persons and families of low and moderate income, and the alternative of
41 forcing such families to live in substandard housing is undesirable since it tends to decrease the
42 interest of such families in their communities, the maintenance of their property and the
43 preservation of their neighborhoods. A large and significant number of commonwealth
44 residents have and will experience hardship in finding decent and affordable housing unless new
45 housing is created and existing housing, where appropriate, is preserved. Unless the supply of
46 housing is increased significantly and expeditiously, a large number of residents of the
47 commonwealth will be compelled to pay a disproportionate amount of their income for housing
48 to the detriment of the health, welfare and well-being of these persons and of the whole
49 community of which they are a part. By increasing the housing supply of the commonwealth,
50 the critical shortage of affordable housing will be ameliorated.

51 It is hereby further found that traditional financing mechanisms have not provided an
52 adequate dedicated funding source for communities attempting to preserve their fundamental
53 character in the face of the risks and dangers set forth above and that traditional financing
54 mechanisms have been inadequate to provide a means whereby cities and towns may acquire,
55 create and preserve open space, acquire, preserve, rehabilitate and restore historic resources, and

56 create, preserve and support community housing for persons and families of low and moderate
57 income.

58 It is hereby further found that the authority and powers conferred under this act and the
59 expenditure of public moneys pursuant thereto constitutes a serving of a valid public purpose
60 and that the enactment of the provisions hereinafter set forth is in the public interest and is
61 hereby so declared to be such as a matter of determination by the general court.

62 SECTION 3. Subparagraph (2) of paragraph (e) of section 3 of said Chapter 44B, as so
63 appearing, is hereby amended after the word “rates;” by deleting the word: - or.

64 SECTION 4. Paragraph (e) of said section 3 of said chapter 44B, as so appearing, is hereby
65 further amended by striking out subparagraph (3) and inserting in place thereof the following
66 new subparagraph: -

67 (3) for an amount not exceeding \$100,000 of the value of each taxable parcel of
68 residential real property; or

69 SECTION 5. Said paragraph (e) of said section 3 of said chapter 44B, as so appearing, is
70 hereby further amended by inserting after subparagraph (3) of said paragraph (e) the following
71 new subparagraph: -

72 (4) for an amount not exceeding \$100,000 of the value of each taxable parcel of class
73 three, commercial, and class four, industrial, property as defined in section 2A of said chapter
74 59.

75 SECTION 6. Subparagraph (2) of paragraph (b) of section 5 of said chapter 44B, as so
76 appearing, is hereby amended by inserting after the word “sites” at the end of the last sentence
77 the following words: - , the committee shall make recommendations with respect to community
78 housing based on the objectives set forth in section 12A(b), and, prior to making any
79 recommendation to the legislative body with respect to community housing, the committee shall
80 make the findings required pursuant to section 12A(f).

81 SECTION 7. Said section 5 of said chapter 44B, as so appearing, is hereby amended by
82 inserting after paragraph (f) the following paragraph: -

83 (g) The community preservation committee shall annually but not later than October 15
84 submit a report to the secretary of the executive office of environmental affairs identifying the
85 parcels of land that were acquired, improved or preserved with monies in the Community
86 Preservation Fund in the preceding fiscal year, the community preservation purpose for which
87 each such parcel is used, and any other information which the secretary requests for purposes of
88 developing and maintaining a database of the parcels throughout the commonwealth that are
89 acquired, improved or preserved under this chapter for community preservation purposes.

90 SECTION 8. Section 6 of said chapter 44B, as so appearing, is hereby amended by striking out
91 the second sentence and inserting in place thereof the following sentence: -

92 In each fiscal year, the legislative body shall make such appropriations from the Community
93 Preservation Fund as it deems necessary for the administrative and operating expenses of the
94 community preservation committee and for other administrative and operating expenses
95 incurred by the city or town resulting from its implementation of this chapter, but the annual

96 appropriations for such expenses shall not exceed an amount equal to 5 per cent of the annual
97 revenues deposited in the Community Preservation Fund.

98 SECTION 9. Section 7 of said chapter 44B, as so appearing, is hereby amended by inserting
99 after the word "committee" at the end of the last sentence of the second paragraph the following
100 words: - and to the city or town as permitted pursuant to section 6.

101 SECTION 10. Paragraph (b) of section 9 of said chapter 44B, as so appearing, is hereby
102 amended by striking out the first sentence and inserting in place thereof the following sentence:
103 -

104 The state treasurer shall deposit or invest the fund in such manner as will secure the highest
105 interest rate available consistent with the safety of the fund and with the requirement that all
106 amounts on deposit be available for withdrawal without penalty for such withdrawal at any
107 time.

108 SECTION 11. Said section 9 of said chapter 44B, as so appearing, is hereby further amended by
109 striking out paragraph (c) and inserting in place thereof the following: -

110 (c) The state treasurer shall make all disbursements and expenditures from the fund
111 without further appropriation, as directed by the commissioner of revenue in accordance with
112 this section and with section 10. The department of revenue shall report by source all amounts
113 credited to said fund and all expenditures from said fund. The commissioner of revenue shall
114 assign personnel of the department as it may need to administer and manage the fund
115 disbursements and any expense incurred by the department for such purposes and any expense
116 incurred by the registers of deeds and the assistant recorders to administer and collect the

117 surcharges pursuant to section 8 shall be deemed an operating and administrative expense of the
118 program. The commissioner of revenue shall annually on October 15 direct the state treasurer
119 to disburse an amount not to exceed one-half of one percent of the annual total revenue received
120 in the preceding fiscal year from a register of deeds or an assistant recorder pursuant to the
121 provisions of section 8 to such register of deeds or assistant recorder to pay operating and
122 administrative expenses of the program certified to the commissioner by the register of deeds or
123 assistant recorder and to disburse an amount not to exceed 5 percent of the annual total revenue
124 received by the state treasurer in the preceding fiscal year under the provisions of said section 8
125 to the department to pay operating and administrative expenses of the program.

126 SECTION 12. Paragraph (b) of section 10 of said chapter 44B, as so appearing, is hereby
127 amended by striking out the first sentence and inserting in place thereof the following sentence:
128 -

129 The commissioner shall multiply the amount remaining in the fund after any disbursements
130 made for operating and administrative expenses pursuant to section 9(c) by 80 percent.

131 SECTION 13. Paragraph (g) of said section 10 of said chapter 44B, as so appearing, is hereby
132 amended by striking out the following words in the first sentence: - “and any necessary
133 administrative expenses have been paid in accordance with section 6.”.

134 SECTION 14. Section 12 of said chapter 44B, as so appearing, is hereby amended by striking
135 out paragraph (a) and inserting in place thereof the following paragraph: -

136 (a) Any real property interest acquired either in whole or in part with monies from the
137 Community Preservation Fund shall be bound by a permanent deed restriction that meets the

138 requirements of section 32 of chapter 184, limiting the use of the interest to the purpose for
139 which it was acquired; provided, however, that any permanent deed restriction solely
140 concerning a fee interest in real property that is acquired either in whole or in part with monies
141 from the Community Preservation Fund shall be exempt from the administrative approval
142 requirements of said section 32 of said chapter 184. The deed restriction shall run with the land
143 and shall be enforceable by the city or town or the commonwealth. A right to enforce the deed
144 restriction may also run to the benefit of a nonprofit, charitable corporation or foundation
145 selected by the city or town. Notwithstanding the provisions of this section to the contrary, if
146 any portion of community housing is financed by one or more third parties, public or private,
147 that are secured by a mortgage on the property, the deed restriction on any real property interest
148 acquired under this chapter for the purpose of creating, preserving or supporting such
149 community housing may be made subordinate to any such mortgage provided that any party
150 with the right to enforce the deed restriction shall be given a reasonable opportunity to cure the
151 default prior to termination of the deed restriction.

152 SECTION 15. Said section 12 of said chapter 44B, as so appearing, is hereby further amended
153 by striking out paragraph (b) and inserting in place thereof the following paragraph: -

154 (b) Real property interests acquired under this chapter for the purpose of acquiring,
155 creating, preserving, rehabilitating or restoring open space or for the purpose of acquiring,
156 preserving, rehabilitating or restoring historic resources shall be owned and managed by the city
157 or town, but the legislative body may delegate management of such real property interests to the
158 conservation commission, the historical commission or the board of park commissioners, as
159 applicable, or to a nonprofit organization created under chapter 180 or chapter 203, or, in the

160 case of interests to acquire sites for future wellhead development, such real property interests
161 may be owned and managed by a water district, a water supply district or a fire district. Real
162 property interests acquired under this chapter for the purpose of creating, preserving,
163 supporting, rehabilitating or restoring community housing may be owned or managed or both by
164 the city or town, the housing authority, any nonprofit organization established by special act of
165 the general court the principal purposes of which include the creation, preservation or support of
166 housing for persons or families of low or moderate income, any nonprofit organization certified
167 by the United States Department of Housing and Urban Development as a community housing
168 development organization, any community development corporation any limited equity
169 cooperative housing corporation established pursuant to chapter 157B of the General Laws or
170 any persons or families of low or moderate income, subject to the provisions of section 12A.

171 SECTION 16. Said chapter 44B, as so appearing, is hereby further amended by inserting after
172 section 12 the following section: -

173 Section 12A. (a) An objective of each undertaking for the creation, preservation or
174 support of community housing that is funded in whole or in part under this chapter shall be to
175 provide for decent and affordable housing for persons or families of low or moderate income.
176 Toward this end, community housing created, preserved or supported in whole or in part under
177 this chapter shall be made available only to persons or families of low or moderate income at a
178 rental cost or purchase price that is affordable for such individuals or families based on then
179 current affordability standards for persons or families of low or moderate income used by the
180 commonwealth or the federal government for programs established to finance affordable
181 housing. Cities and towns shall, to the extent reasonably able without jeopardizing financial

182 feasibility, take steps to ensure the continued occupancy of any community housing created,
183 preserved, supported, rehabilitated or restored in whole or in part under this chapter by persons
184 or families of low or moderate income or to recoup their investment in the property if the
185 housing is resold and occupied by persons or families who are not of low or moderate income.

186 (b) The community preservation committee shall seek to achieve and shall give
187 preference to opportunities for the creation, preservation, support, rehabilitation or restoration of
188 community housing that satisfy one or more of the following additional objectives: (1) the
189 reuse of existing buildings or the construction of new buildings on previously developed sites;
190 (2) the leveraging of community preservation funds to maximize other sources of funding; and
191 (3) the maximization of the number of housing units created, preserved or supported for persons
192 and families of low or moderate income.

193 (c) The community preservation committee shall adopt a policy for selecting tenants
194 and purchasers of community housing created, preserved, supported, rehabilitated or restored
195 from funding under this chapter. The policy shall state: (i) the eligibility and application
196 requirements for persons or families of low or moderate income interested in renting or
197 purchasing community housing created, preserved, supported, rehabilitated or restored under
198 this chapter; (ii) in the case of rental housing, the eligibility and reporting requirements for
199 continued tenancy of such community housing; (iii) and the priorities to be observed by the
200 owner or manager of the community housing in selecting residents or purchasers, including any
201 local preferences allowed under law. The resident and purchaser selection policy shall be
202 subject to, and the implementation of such policy shall be carried out in accordance with, the
203 anti-discrimination provisions of G.L. c.151B. Notwithstanding the provisions of this section to

204 the contrary, rental community housing owned or managed by the housing authority shall be
205 subject to the tenancy selection and continued occupancy requirements set forth in section 32 of
206 chapter 121B.

207 (d) Except as otherwise provided in this chapter, any funds provided to a housing
208 authority under this chapter, or any real property or interest therein acquired under this chapter
209 and transferred to the housing authority for its ownership or management thereof, for the
210 purpose of creating, preserving, supporting, rehabilitating or restoring community housing shall
211 be applied by the housing authority to create, preserve, support, rehabilitate or restore
212 community housing pursuant to the powers granted to, and subject to the conditions and
213 requirements imposed upon, the housing authority under chapter 121B of the General Laws.

214 (e) Prior to providing any loans, grants or other financial assistance to another entity or
215 person for the creation, preservation, support, rehabilitation or restoration of community
216 housing, the board of selectmen or the comparable executive body or officer of a town or the
217 mayor or the comparable executive body or officer of a city shall enter into an agreement with
218 such other entity or person to ensure that the loan, grant or other financial assistance will be
219 applied for the creation, preservation, support, rehabilitation or restoration of community
220 housing, that any benefit to any private entity or person resulting from such loan, grant or
221 financial assistance will be merely incidental to such primary public purpose, and that the other
222 requirements and objectives of this chapter are satisfied.

223 (f) Prior to recommending any funding for the creation, preservation, support,
224 rehabilitation or restoration of community housing to the legislative body of the city or town
225 pursuant to section 5(b)(2) of this chapter, the community preservation committee shall make

226 the following findings with respect to the proposed community housing: (i) that there exists a
227 shortage of decent and affordable housing available to persons and families of low and
228 moderate income within the city or town; (ii) that private enterprise alone cannot provide decent
229 and affordable housing to persons and families of low or moderate income without
230 governmental assistance; (iii) that the amount of city or town funding recommended for the
231 undertaking is reasonable in light of the number and quality of units of community housing to
232 be created, preserved or supported and in light of the other sources of funding likely to be
233 available for the undertaking; (iv) that the community housing created, preserved or supported
234 as a result of the undertaking will be affordable for persons or families of low or moderate
235 income; (v) if the undertaking involves the construction of new housing on a previously
236 undeveloped site, that, in the opinion of the community preservation committee, no reasonable
237 opportunity then exists to create an equal or greater number of units of community housing at
238 the same cost to the city or town by reusing an existing building then available or constructing
239 the community housing on a previously developed site within the city or town then available for
240 the undertaking; and (vi) if the community housing is to be owned or managed by a private
241 entity or person, that any benefit received by such entity or person as a result of the financial
242 contribution made under this chapter will be merely incidental to the public purpose served by
243 such financial contribution.