

SENATE NO. 751

AN ACT PROMOTING AFFORDABLE HOUSING AND COMMUNITY PLANNING IN THE COMMONWEALTH

*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 15 of chapter 19, of the General Laws, as appearing in the 2002 Official Edition,
2 is hereby amended by adding the following clause:-

3 (k) to collect and maintain information on the number of group home units in each community and
4 report such information, including the location of such group home units, to the department of housing
5 and community development on an annual basis. Such location shall be held by the department of
6 housing and community development subject to chapter 66A.

7 SECTION 2. clause (b) of section 15 of chapter 19B of the General Laws, as so appearing, is hereby
8 amended by adding the following sentence:-

9 The department of mental retardation shall report the number of group home units in each city or town
10 on an annual basis to the department of housing and community development. The department of
11 mental retardation shall also report the location of such group homes to the department of housing and
12 community development. Such location shall be held by the department of housing and community
13 development subject to chapter 66A.

14 SECTION 3. The second paragraph of section 3 of chapter 23B of the General Laws, as so appearing,
15 is hereby amended by adding the following clause:-

16 (w) count the number of low or moderate income housing units, as defined by chapter 40B and the
17 accompanying department of housing and community development regulations, in each city or town in
18 the commonwealth on a biennial basis.

19 SECTION 4. Section 20 of chapter 40B of the General Laws is hereby amended by striking out section
20 20, as so appearing, and inserting in place thereof the following section:

21 Section 20 – Definitions The following words, wherever used in this section and in sections 20A to 23,
22 inclusive, shall, unless a different meaning clearly appears from the context, have the following
23 meanings:-

24 “Affordable Housing Threshold”, each city or town shall have a minimum affordable housing
25 threshold such that at least 10 percent of year round housing units meet the requirements for inclusion
26 on the subsidized housing inventory in a manner consistent with sections 20 through 23 of this chapter.

27 “Committee”, the housing appeals committee.

28 “Consistent with local needs”, shall have the meaning set forth in section 20A.

29 “Department”, the department of housing and community development.

30 “Family”, two or more persons who live or will live regularly in a unit as their primary residence
31 whose income and resources are available to meet the family’s needs and who are either related by
32 blood, marriage, operation of law or who have otherwise evidenced an inter-dependent relationship.

33 “Group Home Units”, community housing units or beds serving clients of the department of mental
34 retardation or the department of mental health which are located in a non-institutional setting. Each
35 such unit shall serve 1 client.

36 “Local Board”, any town or city board of survey, board of health, planning board, conservation
37 commission, building inspector or the officer or board having supervision of the construction of
38 buildings or the power of enforcing municipal building laws, or city council or board of selectmen or
39 other boards exercising power specified locally.

40 “Local Program”, a housing program established and administered by a city or town which has been
41 authorized and approved by the department.

42 “Low or moderate-income households”, individuals or families living in a housing unit with combined
43 incomes no higher than 80 percent of the median income for the metropolitan statistical area, primary
44 metropolitan statistical area, or the county in which the housing unit is located, whichever is lower, as
45 determined by the United States department of housing and urban development or, in the absence of
46 such a determination, by the department.

47 “Low or moderate-income housing”, any year round housing subsidized by the federal or state
48 government under any program, or subsidized by a local government under a local program authorized
49 and approved by the department, to produce housing which serves low or moderate-income
50 households as defined in this chapter. Low or moderate income-housing shall also include
51 manufactured homes, as such term is defined in G.L. c. 140, § 32Q.

52 “Subsidy”, the provision of: direct financial assistance; indirect financial assistance including
53 insurance, guarantees, or other means; in kind assistance; technical assistance; or of other supportive
54 services through a federal, state or local housing program to assist the construction of low or
55 moderate-income housing.

56 “Subsidizing Agency”, any agency or entity of state, federal or local government which subsidizes the
57 construction or substantial rehabilitation of low or moderate-income housing and any housing
58 authority acting pursuant to section 26(m) of chapter 121B.

59 “Uneconomic”, any condition brought about by any single factor or combination of factors to the
60 extent that such condition makes it impossible for a public agency or nonprofit organization to proceed
61 in building or operating low or moderate income housing without financial loss, or for a limited
62 dividend organization to proceed and still realize a reasonable return in building or operating such
63 housing within the limitations set by the subsidizing agency on the size or character of the
64 development or on the amount or nature of the subsidy or on the tenants, rentals and income
65 permissible, and without substantially changing the rent levels and units sizes proposed by the public,
66 nonprofit or limited dividend organizations. In calculating whether a condition or conditions render a
67 project uneconomic, the maximum land value shall be the lesser of: (i) actual amount paid by the
68 applicant, or any party related thereto, for the subject property in an arm’s length transaction, with all
69 allowable carrying costs; or (ii) the subject property’s as-is fair market value without the benefit of any
70 waivers or variances from local by-laws or regulations. In making such a calculation, an applicant
71 shall also be bound by the actual costs of development, and, accordingly, costs attributable to related
72 parties shall be limited to the actual costs expended by such parties.

73 SECTION 5. Said chapter is hereby further amended by inserting after section 20, the following new
74 section:-

75 Section 20A. Consistent with local needs.

76 Decisions and requirements by the zoning board of appeals shall be considered consistent with local
77 needs if they are reasonable in view of the regional need for low or moderate income housing
78 considered with the number of low and moderate income persons in the city or town affected and the
79 need to protect the health or safety of the occupants of the proposed housing or of the residents of the
80 city or town, to promote better site and building design in relation to the surroundings, or to preserve
81 open spaces, and if such decisions and requirements are applied as equally as possible to both

82 subsidized and unsubsidized housing. A zoning board of appeals is not required to grant waivers for
83 use restrictions in zoning districts that are limited to industrial uses.

84 Decisions and requirements shall also be deemed consistent with local needs when imposed by a board
85 of zoning appeals after comprehensive hearing in a city or town where:

86 (1) Low or moderate-income housing exists which is at least 10 per cent of the housing units reported
87 in the most recent federal decennial census of the city or town or on sites comprising one and one half
88 per cent or more of total land area zoned for residential, commercial or industrial use; (2) The
89 development is large scale for the city or town in which it is proposed. A proposed development shall
90 be large scale if:

91 * in a city or town which has a total number of 7,500 or more housing units as enumerated in the
92 most recent federal decennial census, the application for a comprehensive permit involves construction
93 of more than 300 housing units or a number of housing units equal to or greater than 2 percent of all
94 housing units in the city or town, whichever number is greater; or

95 * in a city or town which has between 5,000 and 7,500 housing units exclusive, as so
96 enumerated, the application for a comprehensive permit involves construction of more than 250
97 housing units; or

98 * in a city or town which has between 2,500 and 5,000 housing units inclusive, as so enumerated,
99 the application for a comprehensive permit involves construction of more than 200 housing units; or

100 * in a city or town which has less than 2,500 housing units, as so enumerated, the application for
101 a comprehensive permit involves construction of more than 150 housing units; or

102 (3) The city or town has made recent progress toward attaining its affordable housing threshold.

103 Recent progress toward its affordable housing threshold shall mean that the number of housing units
104 that have been created during the twelve months prior to the date of the comprehensive permit

105 application and that are eligible to be included on the subsidized housing inventory equal to or greater
106 than 2 percent of the city or town's total housing units as enumerated in the most recent federal
107 decennial census; or

108 (4) 12 months has not elapsed between the date of application for a comprehensive permit and the date
109 of the most recent pendency of a prior application for a variance, special permit, subdivision or other
110 approval related to construction on the same land if that prior application included no provision for
111 low or moderate income housing, provided that any such application shall not be considered a prior
112 application if it concerns only insubstantial changes to an existing use;

113 (5) the city or town has adopted an affordable housing plan approved by the department pursuant to
114 which there is an increase in its number of low or moderate-income housing units eligible for inclusion
115 on the subsidized housing inventory by at least one-half of 1 percent of total units every calendar year
116 until housing needs are met pursuant to this chapter, subject to paragraphs (a) and (b) below.

117 a. The affordable housing plan shall be based upon a comprehensive housing needs assessment, which
118 shall include an analysis of the most recent federal decennial census data of the city or town's
119 demographics and housing stock, development constraints as well as of the city or town's ability to
120 mitigate them, and the city or town's infrastructure.

121 b. The affordable housing plan shall address the matters set out in guidelines adopted by the
122 department, including:

123 * a mix of housing, such as rental and homeownership opportunities for families, individuals,
124 persons with disabilities or special needs, and the elderly that are consistent with local needs and
125 feasible within the housing market in which they will be situated;

126 * the strategy by which the city or town will achieve its housing goals based upon its
127 comprehensive needs assessment;

128 * the characteristics of projects the city or town prefers that are consistent with the guidelines
129 established by the department of smart growth and development including, but not limited to,
130 redevelopment and adaptive reuse, cluster housing, higher-density housing, transit or pedestrian-
131 oriented development which provides access to jobs and services, resource efficient buildings, and
132 development in locations with existing infrastructure;

133 * a description of the use restrictions which shall be imposed on low- or moderate-income
134 housing units to ensure that each unit will remain affordable to and occupied by low or moderate-
135 income households;

136 * the identification of zoning districts or geographic areas which permit residential uses which
137 the city or town proposes to modify or has created for the purposes of low or moderate-income
138 housing developments;

139 * the identification of specific sites or characteristics of sites for which the city or town will
140 encourage the filing of comprehensive permit applications pursuant to section 21 of this chapter; and

141 * city or town owned parcels, if any, for which the city or town commits to issue requests for
142 proposals to develop low or moderate-income housing.

143 c. Upon submission to the department, the plan shall also be submitted to the regional planning district
144 established pursuant to this chapter or the cape cod commission established pursuant to section 18 of
145 chapter 716 of the laws of 1989 as amended, or the martha's vineyard commission established
146 pursuant to chapter 831 of the laws of 1977, within such district or commission area such project is
147 located or any other regional planning district hereafter established by the general court, which shall
148 have 30 days to comment to the department on the implications of the plan for housing need, growth
149 and development concerns, and other relevant matters. Within 90 days after its submission to the
150 department by a city or town's chief executive officer, the department shall approve the plan if it meets

151 the requirements specified herein, otherwise, it shall disapprove the plan. The department shall notify
152 the city or town of its decision to either approve or disapprove a plan in writing. If the department
153 disapproves a plan, the notification shall include a statement of reasons for the disapproval. A city or
154 town that originally submitted a plan that had been disapproved may submit a new or revised plan to
155 the department at any time. A city or town may amend its plan from time to time if the department
156 approves the amendment. If the department fails to mail notice of approval or disapproval of a plan or
157 plan amendment within 90 days after its receipt, the plan or plan amendment shall be deemed to be
158 approved.

159 d. The department shall certify annually whether a city or town is in compliance with an approved
160 plan. The department shall determine whether a city or town is in compliance within 30 days of receipt
161 of a city or town's request for such a certification. A city or town shall be in compliance if it has
162 reached the benchmarks established in its approved plan and has made all changes necessary to
163 accommodate future planned development. If the department determines the city or town is in
164 compliance with its plan, the certification shall be retroactive to the date the certification was
165 requested. Provided further if a city or town fails to achieve the goals established in the approved plan
166 and as documented on the subsidized housing inventory the city or town shall not be in compliance
167 with its plan and shall submit a new plan for certification by the department.

168 e. Units which were created and which became eligible to be counted toward a city or town's
169 affordable housing threshold between August 1, 2002 and December 31, 2002 shall be credited toward
170 the city or town's affordable housing threshold for the first year of planned production under an
171 approved affordable housing plan, regardless of the date the plan is submitted to or certified by the
172 department. An approved plan shall take effect for the purpose of the definition of consistent with
173 local needs in this section only when the department certifies that the city or town has approved

174 permits resulting in an initial annual increase in its low-or moderate-income housing units of at least
175 one-half of 1 percent of total housing units in accordance with its plan. It is the responsibility of the
176 city or town to request such certification from the department. Once the department has made such a
177 certification of initial compliance and subsequent annual certifications of compliance:

178 * The board may, in its discretion, deny, or approve with conditions, any comprehensive permit
179 applications for the period of one year from any certification, and such denial or approval with
180 conditions shall be deemed consistent with local needs; or, alternatively,

181 * The board may, in its discretion, deny or approve with conditions any comprehensive permit
182 applications for the period of 2 years from any certification, if, in the year it was certified, the city or
183 town has increased its low or moderate-income housing stock by at least 1 percent of total housing
184 units in a manner consistent with the plan, or alternatively,

185 * The board may, in its discretion, deny, or approve with conditions, any comprehensive permit
186 applications for the period of 3 years from any certification, if, in the year it was certified, the city or
187 town has increased its low or moderate-income housing stock by at least 1 1/2 percent of total housing
188 units in a manner consistent with the plan; or

189 (6) the board has approved 3 or more comprehensive permits, at least 3 of which contain 20 or more
190 housing units each within 12 months preceding the filing of an application for a comprehensive permit
191 and those permits have become final.

192 SECTION 6. Said chapter is hereby further amended by inserting after section 20, the following new
193 section:-

194 Section 20B. Local determination of affordable housing threshold.

195 (a) Comprehensive permit requirements.

196 (1) To be eligible to submit an application for a comprehensive permit or to file or maintain an appeal
197 before the committee, the applicant and the project shall fulfill the following jurisdictional
198 requirements:

199 (i) The applicant shall be a public agency, a non-profit organization, or a limited dividend
200 organization. An applicant shall satisfy the limited dividend organization requirement if the
201 comprehensive permit contains a condition that the owner of the project execute a regulatory
202 agreement with a subsidizing agency which limits the owner's return on building or operating the
203 project to: (i) 20% of total development costs for a home-ownership project; and/or (ii) 10% per year
204 for rental projects. Each regulatory agreement shall affirmatively require that all excess profit shall be
205 paid to the local municipality for the exclusive use of developing, maintaining, or operating affordable
206 housing, provided that such housing is restricted for sale or lease to households earning no more than
207 120% of the designated Area Median Income. Such regulatory agreement shall be recorded or filed
208 prior to the beginning of construction of the land records with the registry of deeds or land court in the
209 registry district or district office of the land court in which the project is located. In calculating the
210 allowable limited dividend, the maximum allowable land value shall be the lesser of: (i) actual
211 amount paid by the applicant, or a party related thereto, for the subject property in an arm's length
212 transaction, with all allowable carrying costs; or (ii) the subject property's as-is fair market value
213 without the benefit of any waivers or variances from local by-laws or regulations. In making such a
214 calculation, an applicant shall also be bound by the actual costs of development, and, accordingly,
215 costs attributable to related parties shall be limited to the actual costs expended by such parties. An
216 applicant shall disclose, to the municipality all documents which are used to determine the amount of
217 the dividend or profit in the projects and the local municipality is permitted to monitor an applicant's
218 compliance with its limited dividend obligations.

219 (ii) The project shall be fundable by a subsidizing agency under a low and moderate-income housing
220 subsidy program.

221 * The applicant shall control the site.

222 * The proposed development shall contain no less than 25 percent of its total housing units as
223 units affordable to low or moderate income households, or in the alternative a proposed development
224 may contain no less than 20 percent of its total housing units as affordable to households whose
225 income does not exceed 50 percent of the area median income.

226 Provided further the inclusion of commercial, recreational or other land uses which are in conjunction
227 with the housing development shall not preclude eligibility.

228 (2) Fundability shall be established by submission of a written determination of project eligibility by a
229 subsidizing agency as follows:

230 (i) A determination of project eligibility shall include:

- 231 1. the name and address of the applicant;
- 232 2. the address of the site and site description;
- 233 3. the number and type (homeownership or rental) of housing units proposed;
- 234 4. the name of the housing program or programs under which project eligibility is sought; and
- 235 5. relevant details of the particular project if not mandated by the housing program, including the
236 percentage of units for low or moderate income households, income eligibility standards, the duration
237 of use restrictions requiring occupancy by low or moderate income households, and the limited
238 dividend status of the developer;

239 (ii) A determination of project eligibility shall make the following findings:

- 240 1. that the proposed project appears generally eligible under the requirements of the housing
241 program or programs, subject to final review of eligibility and to final approval;

- 242 2. that the subsidizing agency has performed an on-site inspection of the site and has reviewed
243 pertinent information submitted by the applicant;
- 244 3. that the proposed housing design and density are generally appropriate for the site on which it
245 is located, taking into account surrounding land uses, proximity to transportation, services and public
246 utilities, and design to minimize land use impacts;
- 247 4. that the proposed project appears financially feasible within the housing market in which it will
248 be situated, based on comparable rentals or sales figures;
- 249 5. that an initial pro forma has been reviewed and the project appears financially feasible on the
250 basis of estimated development costs; and
- 251 F. that the developer of the proposed project meets the general eligibility standards of the housing
252 program or programs.

253 * In addition to the foregoing, a subsidizing agency shall consider the following in making a
254 determination of project eligibility: overall density and size; environmental impact, including
255 watersheds and existing land uses; consistency with principles of smart growth; impact on historical
256 resources; the impact of other pending applications for housing development; and other local concerns
257 of the city or town where the project is located.

258 * Within 10 days of filing of its application for a determination of project eligibility with a
259 subsidizing agency for preliminary approval of a project, the applicant shall serve written notice upon
260 the director of the department.

261 * Within 10 days of filing the application for a determination of project eligibility the applicant
262 shall provide written notice and a copy of such application to the chief executive officer of the
263 involved city or town and to the members of the general court representing such city or town. The
264 applicant shall also provide written notice of the application to the planning board, board of health,

265 conservation commission, water and sewer district, fire and police.. Within 30 days after such notice,
266 the chief executive officer or designee of the chief executive officer may schedule and hold a meeting
267 at a location within the involved city or town. The meeting shall be chaired by the city or town's chief
268 executive officer or designee and shall be attended by the applicant or its representative.

269 Representatives from local boards are encouraged to attend the meeting and provide written comment.
270 The purpose of the meeting is to allow the applicant and the city or town representatives to informally
271 discuss the preliminary proposal so that the parties involved can develop an understanding of the
272 proposal and to respond to concerns raised in an effort to achieve an outcome that meets the needs of
273 the involved city or town as well as the applicant. In addition, a representative from a public or quasi-
274 public housing agency, or a regional planning agency within the regional planning district or its
275 designee knowledgeable with respect to chapter 40B may provide technical assistance on topics
276 including, but not limited to, site design and density, open space, marketing, use restrictions, allowable
277 costs and profit limitations. Following the close of the meeting, the chief executive officer of the city
278 or town, local boards, and the regional planning district may issue written comments within 14 days to
279 the subsidizing agency. Project eligibility determinations must be made within 90 days from receipt of
280 the municipality's comments.

281 * Within 10 days of receipt of a written determination of project eligibility from the subsidizing
282 agency, the applicant shall serve a copy of that determination upon the director of the department.

283 (vii) An applicant which has obtained a determination of project eligibility shall be presumed to be
284 eligible to submit an application for comprehensive permit or to file or maintain an appeal before the
285 committee. Nothing set forth in this section 20B shall be deemed to confer upon any city or town, or
286 any of its boards, committees, commissions or officials, or upon any other person the right to appeal or
287 judicial review in any form the determination of project eligibility by the subsidizing agency, it being

288 intended that the rights of appeal conferred by sections 21 and 22 of this chapter shall be the exclusive
289 remedy for any party aggrieved by the issuance or denial of any comprehensive permit hereunder.

290 (viii) If project funding is provided through a non-governmental entity, a public or quasi-public entity
291 authorized by the department shall make the determination of project eligibility. The designated entity
292 that issued the project eligibility determination shall administer the project thereafter as specified in
293 program guidelines issued by the department.

294 (3) A showing that the applicant, or any entity 50 percent or more of which is owned by the applicant,
295 owns a 50 percent or greater interest, legal or equitable, in the proposed site, or holds any option or
296 contract to purchase the proposed site, shall be considered by the board or the housing appeals
297 committee to be conclusive evidence of the applicant's interest in the site.

298 (4) No determination of project eligibility shall be issued for a project sooner than 45 days after the
299 filing of its application with the subsidizing agency for preliminary approval of the project. A
300 determination of project eligibility shall be for a particular financing program or programs. An
301 applicant may proceed under alternative financing programs if the application to the board or appeal to
302 the committee so indicates and if full information concerning the project under the alternative
303 financing arrangements is provided.

304 (5) Failure of the applicant to fulfill any of the requirements in this section may be raised by the
305 housing appeals committee, the board, or a party at any time, and shall be cause for dismissal of the
306 application or appeal. No application or appeal shall be dismissed, however, unless the applicant has
307 had at least 60 days to remedy the failure.

308 (b) Local Action Prerequisite to Appeal.

309 In order to appeal to the committee, an applicant shall have applied to the board for a comprehensive
310 permit in accordance with section 21 of this chapter and shall have been denied such permit or shall

311 have been granted such permit with conditions which it alleges make the building or operation of such
312 housing uneconomic.

313 (c) Local progress toward affordable housing threshold.

314 (1) Affordable housing thresholds. A city or town may record progress towards its affordable housing
315 threshold as documented in the subsidized housing inventory in the following manner:

316 i. Rental Housing Units: (a) If at least 25 percent of housing units within a development are restricted
317 to serve low or moderate-income households, 100 percent of housing units within the development
318 shall be eligible to be included toward the city or town's affordable housing threshold. If fewer than 25
319 percent of housing units within a development are restricted to serve low or moderate-income
320 households, only those units which serve low or moderate-income households shall be eligible to be
321 included toward the city or town's affordable housing threshold or (b) if at least 20 percent of housing
322 units within a development are restricted to serve households with household income at or below 50
323 percent of area median income, 100 percent of housing units within the development shall be eligible
324 to be included toward the city or town's affordable housing threshold. If fewer than 25 percent of
325 housing units within a development are restricted to serve low or moderate-income households, only
326 such restricted units shall be eligible to be included toward the city or town's affordable housing
327 threshold;

328 ii. Homeownership Units: (a) if at least 25 percent of housing units within a development are restricted
329 to serve low or moderate-income households, 2 times the actual number of such restricted units, not to
330 exceed the total number of homeownership units authorized by the permit shall be included toward the
331 city or town's affordable housing threshold or (b) if at least 20 percent of housing units within a
332 development serve households earning at or below 50 percent of area median income, 2 times the
333 actual number of units serving such households, not to exceed the total number of homeownership

334 units authorized by the permit shall be included toward the city or town's affordable housing
335 threshold. If fewer than 25 percent of housing units within a development are restricted to serve low or
336 moderate-income households, only such units which are restricted to serve low or moderate-income
337 households shall be eligible to be included toward the city or town's affordable housing threshold;

338 iii. Community Preservation Act Housing Units: any community housing, as defined in chapter 44B
339 which is restricted to occupancy by persons of low or moderate income households, provided further,
340 that such housing payment exclusive of utilities shall not exceed 30 percent of monthly income of a
341 household at or below 80 percent of area median income, adjusted for household size, shall be eligible
342 to be included toward the city or town's affordable housing threshold;

343 iv. Accessory Apartment Units: any accessory apartment which is approved pursuant to a city or
344 town's ordinance or bylaw and is occupied by persons of low or moderate income, provided further
345 that such rental payment exclusive of utilities shall not exceed 30 percent of monthly income of a
346 household earning at or below 80 percent of area median income, adjusted for household size, shall be
347 eligible to be included toward the city or town's affordable housing threshold. Each such accessory
348 apartment unit shall be subject to a use restriction, which may be revocable upon the sale of the
349 principal residence. Each city or town shall certify annually the number of such accessory apartments
350 within its borders;

351 v. Group Home Units: all group home units in each city or town as reported annually by the
352 department of mental health and the department of mental retardation to the department shall be
353 eligible to be included toward the city or town's affordable housing threshold;

354 vi. Local Housing Units: housing units created under a local program or subsidy or which qualify as
355 local initiative units pursuant to regulations promulgated by the department and restricted to serve low

356 or moderate income households as defined in this chapter shall be eligible to be included toward the
357 city or town's affordable housing threshold as documented on the subsidized housing inventory; and
358 vii. Urban Center Housing Tax Increment Financing Units: low or moderate income housing created
359 pursuant to section 60 of chapter 40 provided further, that such housing payment exclusive of utilities
360 shall not exceed 30 percent of monthly household income of a household earning at or below 80
361 percent of area median income shall be eligible to be included toward the city or town's affordable
362 housing threshold.

363 viii. Expiring Use Units: In instances where housing units were developed to serve low or moderate
364 income households and the use restriction has expired as a result of refinancing or operation of law or
365 otherwise, the department shall have the discretion to count such units pursuant to guidelines
366 promulgated by the department toward a city or town's affordable housing threshold as recorded in the
367 subsidized housing inventory.

368 (d) Subsidized Housing Inventory.

369 The department shall maintain an inventory of low or moderate income housing units. Such inventory
370 shall be published biennially, provided further that such inventory shall be updated for a specific city
371 or town upon request by such city or town. Housing units authorized by a comprehensive permit or
372 special permit shall be eligible to be included toward a city or town's affordable housing threshold as
373 recorded on the subsidized housing inventory when the comprehensive permit or special permit
374 becomes final, provided that housing units for which building permits have not been issued within 1
375 year of the date when the comprehensive permit or special permit became final shall no longer be
376 eligible to be counted toward the city or town's affordable housing threshold until the building permits
377 have been issued. The department may for good cause waive such time requirement. Low or moderate
378 income housing units not authorized pursuant to a comprehensive permit or special permit shall be

379 eligible to be counted toward the city or town's affordable housing threshold when a building or
380 occupancy permit is issued.

381 SECTION 7. Said chapter is hereby further amended by inserting after section 20, the following
382 section:-

383 Section 20C. A city or town, pursuant to sections 20 through 23 of chapter 40B, with a pending
384 comprehensive permit for an application of development of housing, that shares a contiguous border to
385 an adjacent city or town may propose to enter into an agreement with such city or town to share
386 infrastructure and service costs associated with such development. Pursuant to such agreement, if such
387 infrastructure and service costs are shared by a city or town, both cities and towns may share in
388 counting such units towards their affordable housing threshold pursuant to sections 20 through 23 of
389 chapter 40B. Any such proposed agreement shall be subject to approval by the department of housing
390 and community development, which shall set forth guidelines for such agreements. Provided further
391 such cities and towns may provide for a joint application to each city or town for a comprehensive
392 permit application and provide for a joint hearing process for consideration of such joint application by
393 such local zoning boards.

394 SECTION 8. Said chapter is hereby further amended by inserting after section 20, the following
395 section:-

396 Section 20D. The Massachusetts Housing Partnership Fund board, as established by section 35 of
397 chapter 405 of the acts of 1985, or its designee, shall make technical assistance available to local
398 zoning boards of appeal to assist in their review of applications for comprehensive permits.

399 No subsidizing agency shall issue a determination of project eligibility or site approval unless a fee to
400 defray the costs of such technical assistance program has been collected from the applicant and

401 remitted to the Massachusetts Housing Partnership Fund board in accordance with a fee schedule
402 adopted by the department.

403 SECTION 9. Said chapter is hereby further amended by inserting after section 20, the following
404 section:-

405 Section 20E. The department shall promulgate regulations and establish programs, policies, guidelines
406 and necessary fee schedules to implement sections 20 to 23, inclusive, of this chapter. The department
407 shall make available planning and housing development information and technical assistance to assist
408 cities and towns in reaching their affordable housing threshold as defined in this chapter.

409 SECTION 10. Section 23 of said chapter 40B, as so appearing, is hereby amended by inserting after
410 the first sentence the following sentence:-

411 The committee shall receive evidence of and shall consider the following matters: (1) a city or town's
412 master plan, comprehensive plan or community development plan, and (2) the results of the city or
413 town's efforts to implement such plans.

414 SECTION 11. The department of housing and community development in consultation with the
415 commonwealth development coordinating council shall create a pilot program under which 3 housing
416 regions may be established to address regional housing needs of cities and towns within a region. Such
417 cities or towns in a region may agree to meet affordable housing thresholds established under sections
418 20 through 23 of chapter 40B in one region. The department and the commonwealth development
419 coordinating council shall establish criteria for such housing region to include but not be limited to the
420 following:

421 1. only contiguous communities that have not exceeded 10 percent toward their affordable
422 housing thresholds on the subsidized housing inventory maintained by the department pursuant to
423 sections 20 through 23 of chapter 40B shall be eligible to participate in such region;

424 2. contiguous communities shall enter into an inter-municipal agreement and develop a joint
425 housing plan for the region consistent with development goals established by the department. Such
426 plan shall:

427 1. address how the communities will share the infrastructure or service costs and benefits of low-
428 and moderate-income housing development, and how credit for such affordable housing development
429 will be reflected on the subsidized housing inventory for each city or town within the region.

430 2. address how contiguous cities or towns will achieve their housing goals. The total housing
431 goals in the region shall be at a minimum, the sum of the goals established by section 20 of chapter
432 40B of each city or town participating in the plan.

433 The authority granted by this section shall cease on June 30, 2006, and the department shall report the
434 results of said pilot program to the clerks of the house of representatives and the senate and the joint
435 committee on housing and urban development.

436 SECTION 12. Notwithstanding any general or special law to the contrary, no application for a
437 comprehensive permit filed before the effective date of this act shall be denied as a result of changes to
438 the General Laws pursuant to this act.

439 SECTION 13. This act shall take effect on June 30, 2005.