

SENATE No. 90

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to sustain community preservation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	First Middlesex and Norfolk
Stephen Kulik	1st Franklin
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Frank I. Smizik	15th Norfolk
Joan M. Menard	First Bristol and Plymouth
James E. Vallee	10th Norfolk
Robert A. O'Leary	Cape and Islands
Matthew C. Patrick	3rd Barnstable
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Harriette L. Chandler	First Worcester
Bruce J. Ayers	1st Norfolk
James B. Eldridge	Middlesex and Worcester
Stanley C. Rosenberg	Hampshire and Franklin
Scott P. Brown	Norfolk, Bristol and Middlesex
Jennifer L. Flanagan	Worcester and Middlesex
Benjamin B. Downing	Berkshire, Hampshire and Franklin
James E. Timilty	Bristol and Norfolk
Patricia D. Jehlen	Second Middlesex
Susan C. Tucker	Second Essex and Middlesex

Susan C. Fargo	Third Middlesex
Kenneth J. Donnelly	Fourth Middlesex
Stephen J. Buoniconti	Hampden
Bruce E. Tarr	First Essex and Middlesex
Marc R. Pacheco	First Plymouth and Bristol
Robert L. Hedlund	Plymouth and Norfolk
Gale D. Candaras	First Hampden and Hampshire
Cleon H. Turner	1st Barnstable
Barbara A. L'Italien	18th Essex
Kate Hogan	3rd Middlesex
Peter V. Kocot	1st Hampshire
Steven J. D'Amico	4th Bristol
Timothy J. Toomey, Jr.	26th Middlesex
Jason Lewis	31st Middlesex
Alice K. Wolf	25th Middlesex
Alice Hanlon Peisch	14th Norfolk
James R. Miceli	19th Middlesex
Denis E. Guyer	2nd Berkshire
Timothy Madden	Barnstable, Dukes and Nantucket
Rosemary Sandlin	3rd Hampden
Joyce A. Spiliotis	12th Essex
Carolyn Dykema	8th Middlesex
Sarah K. Peake	4th Barnstable
William N. Brownsberger	24th Middlesex
James J. O'Day	14th Worcester District
Jay R. Kaufman	15th Middlesex
Jeffrey Davis Perry	5th Barnstable
Cory Atkins	14th Middlesex
Ellen Story	3rd Hampshire
Christine E. Canavan	10th Plymouth
Garrett J. Bradley	3rd Plymouth
Geraldine Creedon	11th Plymouth
Anne M. Gobi	5th Worcester
Kay Khan	11th Middlesex
Jennifer Benson	37th Middlesex
William M. Straus	10th Bristol
Stephen R. Canessa	12th Bristol
Louis L. Kafka	8th Norfolk
James M. Murphy	4th Norfolk
James T. Welch	6th Hampden
John W. Scibak	2nd Hampshire
Michael J. Rodrigues	8th Bristol

Thomas P. Conroy	13th Middlesex
Geraldo Alicea	6th Worcester
Carlo P. Basile	1st Suffolk
James Cantwell	4th Plymouth
Cheryl A. Coakley-Rivera	10th Hampden
Todd M. Smola	1st Hampden
Richard J. Ross	9th Norfolk
Paul McMurtry	11th Norfolk
Ann-Margaret Ferrante	5th Essex
Harold P. Naughton, Jr.	12th Worcester
John D. Keenan	7th Essex
Colleen M. Garry	36th Middlesex
John F. Quinn	9th Bristol
Susan Williams Gifford	2nd Plymouth
Thomas J. Calter	12th Plymouth
Lida E. Harkins	13th Norfolk
Mark V. Falzone	9th Essex
Benjamin Swan	11th Hampden
Robert L. Rice, Jr.	2nd Worcester
Thomas M. Stanley	9th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO SUSTAIN COMMUNITY PRESERVATION.

Whereas, the deferred operation for this act would tend to defeat its purpose, which is forthwith to continue the commonwealth's commitment and partnership with cities and towns to enhance affordable housing, park and open space preservation and historic preservation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 Two is hereby amended by removing the definition of
2 "Rehabilitation" and inserting in place thereof the following:-

3 "Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to
4 historic resources, open spaces, lands for recreational use and community housing, but not
5 including maintenance, for the purpose of making such historic resources, open spaces, lands for
6 recreational use and community housing functional for their intended use, including but not
7 limited to improvements to comply with the Americans with Disabilities Act and other federal,
8 state or local building or access codes. With respect to historic resources, rehabilitation shall
9 have the additional meaning of work to comply with the Standards for Rehabilitation stated in
10 the United States Secretary of the Interior's Standards for the Treatment of Historic Properties
11 codified in 36 C.F.R. Part 68. With respect to land for recreational use, rehabilitation shall

12 include the replacement of playground equipment and other capital improvements to the land or
13 the facilities thereon which make the land or the related facilities more functional for the related
14 recreational use.

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

17 (b 1/2) As an alternative to subsection (b) of section 3, the legislative body may vote to
18 accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per
19 cent of the real estate tax levy against real property, and making an additional commitment of
20 funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real
21 property, provided that additional funds so committed shall come from another source or sources
22 of municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter
23 64G of the general laws, linkage fee and inclusionary zoning payments, however authorized, the
24 sale of municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines
25 and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws,
26 existing dedicated housing, open space and historic preservation funds, however authorized, and
27 provided further that additional funds so committed shall not include any federal funds or funds
28 from private sources, provided that inclusionary zoning payments and linkage fees shall be
29 considered public funds for the purposes of this chapter. The total funds committed to the
30 Community Preservation Act under this subsection shall not exceed 3% of the real estate tax levy
31 against real property, less exemptions adopted.

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

35 SECTION 3: Section 3 of said chapter 44B is hereby amended by inserting after paragraph e
36 (3) the following new paragraph:-

37 (4) for \$100,000 of the value of each taxable parcel of class three, commercial, and class
38 four, industrial, property as defined in section 2A of said chapter 59.

39 SECTION 4. Section 5 of the Chapter 44B, as most recently amended by Chapter 289 of the
40 Acts of 2006 is hereby amended by striking paragraph (b)(2) in its entirety and inserting in place
41 thereof the following:-

42 (2) The community preservation committee shall make recommendations periodically
43 throughout the year, or as a single yearly recommendation to the legislative body for the
44 acquisition, creation and preservation of open space; for the acquisition, preservation,
45 rehabilitation and restoration of historic resources; for the acquisition, creation, preservation,
46 rehabilitation and restoration of land for recreational use; for the acquisition, creation,
47 preservation and support of community housing; and for the rehabilitation or restoration of open
48 space and community housing that is acquired or created as provided in this section. With respect
49 to community housing, the community preservation committee shall recommend, wherever
50 possible, the reuse of existing buildings or construction of new buildings on previously
51 developed sites. With respect to recreational use, the acquisition of artificial turf for athletic
52 fields shall be prohibited.

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

55 (d) After receiving such recommendations from the community preservation committee, the
56 legislative body shall then take such action and approve such appropriations from the
57 Community Preservation Fund as set forth in section 7, and such additional non CPA
58 appropriations as it deems appropriate to carry out the recommendations of the community
59 preservation committee. In the case of a city, the ordinance shall provide for the mechanisms
60 under which the legislative body may approve and veto appropriations made pursuant to this
61 chapter, in accordance with the city charter.

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

64 Section 6. In every fiscal year and upon the recommendation of the community preservation
65 committee, the legislative body shall spend, or set aside for later spending, not less than 10 per
66 cent of the annual revenues in the Community Preservation Fund for open space, not less than 10
67 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual
68 revenues for community housing. In each fiscal year, the legislative body shall make such
69 appropriations from the Community Preservation Fund as it deems necessary for the
70 administrative and operating expenses of the community preservation committee, but the
71 appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation
72 Fund. The legislative body may also make such appropriations from the Community
73 Preservation Fund as it deems necessary for direct costs associated with a municipality's first
74 year implementation, including but not limited to tax billing software or hiring outside vendors,

75 provided that the total of any administrative and operating expense of the Community
76 Preservation Committee and the first year implementation expenses do not exceed five per cent
77 of the annual revenues in the Community Preservation Fund.

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

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

84 The following monies shall be deposited in the fund: (a) all funds collected from the real
85 property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b)
86 if applicable, additional funds appropriated or dedicated from allowable municipal sources
87 pursuant to subsection (b ½) of section 3; (c) all funds received from the commonwealth or any
88 other source for such purposes; and (d) proceeds from the disposal of real property acquired with
89 funds from the Community Preservation Fund.

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

92 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when
93 the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The
94 fees for so recording, filing or depositing a municipal lien certificate shall be subject to a
95 surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation.
96 No surcharge shall apply to a declaration of homestead under chapter 188 or to the filing of a

97 third mortgage or fourth mortgage extended by any public agency or quasi public agency,
98 including but not limited to a Commonwealth municipality or the Massachusetts Housing
99 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,
100 abstract cards, additional square feet for the filing and recording of plans or for additional or
101 required marginal references.

102 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the
103 instrument is left for registering, filing or entering with respect to registered land shall be subject
104 to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate
105 shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of
106 community preservation. No surcharge shall apply to a declaration of homestead of chapter 188
107 or to the filing of a third mortgage or fourth mortgage extended by any public agency, including
108 but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. No
109 surcharge shall apply to the fees charged for additional lots shown on plans, for indexing
110 instruments recorded while a petition for registering is pending, for additional certificates of
111 sewer assessments, for old age assistance liens, for duplicates and for photocopies.

112 (c) Notwithstanding subsections (a) and (b) of section 8, in the event that the Massachusetts
113 Community Preservation Trust Fund balance is insufficient to support a 75% first round match
114 distribution pursuant to section 10 for all cities and towns that have accepted sections 3 to 7
115 inclusive, as certified by the commissioner of revenue on October 1st of each year, the fees of
116 the registry of deeds and fees of the assistant recorder to be paid when the instrument is left for
117 recording, filing or deposit and the fee for so recording, filing or depositing a municipal lien
118 certificate shall be subject to a surcharge to be determined by the commissioner of the
119 department of revenue necessary to support, by the commissioner's best reasonable estimate, a

120 75% first round match for the following fiscal year, with each fee rounded to the nearest dollar.
121 Under no circumstances shall each fee surcharge to be paid to the register of deeds or assistant
122 recorder when the instrument is left for recording, filing or deposit for community preservation
123 be greater than \$70. Under no circumstances shall each fee surcharge paid to the register of
124 deeds or assistant recorder for so recording, filing or depositing a municipal lien certificate for
125 community preservation be greater than \$40.

126 The surcharges shall be imposed for the purposes of community preservation. No community
127 preservation surcharges shall apply to a declaration of homestead under chapter 188 to the filing
128 of a third mortgage or fourth mortgage extended by any public agency, including but not limited
129 to a Commonwealth municipality or the Massachusetts Housing Partnership. No surcharge shall
130 apply to the fees charged for additional pages, photostatic copies, abstract cards, additional
131 square feet for the filing and recording of plans or for additional or required marginal
132 references.

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

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

139 SECTION 9. Paragraph (c) of Section 9 of said Chapter 44B is hereby amended by striking
140 said paragraph and inserting in place therefore the following:-

141 (c) The state treasurer shall make all disbursements and expenditures from the fund without
142 further appropriation, as directed by the commissioner of revenue in accordance with said section

143 10. The department of revenue shall report by source all amounts credited to said fund and all
144 expenditures from said fund. The commissioner of revenue shall assign personnel of the
145 department as it may need to administer and manage the fund disbursements and any expense
146 incurred by the department for such purposes and any expense incurred by the registers of deeds
147 and the assistant recorder to administer and collect the surcharges pursuant to section 8 shall be
148 deemed an operating and administrative expense of the program. The commissioner of revenue
149 shall annually on October 15th direct the state treasurer to disburse an amount not to exceed one-
150 half of one per cent of the annual total revenue received in the preceding fiscal year from a
151 register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register
152 of deeds or assistant recorder to pay operating and administrative expenses of the program
153 certified to the commissioner by the register of deeds or assistant recorder and to disburse an
154 amount not to exceed 5 per cent of the annual total revenue received by the state treasurer in the
155 preceding fiscal year under the provisions of said section 8 to the department of revenue to pay
156 total operating and administrative expenses of the program.

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

159 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies
160 from the fund established in section 9 to cities and towns that have accepted sections 3 to 7,
161 inclusive, and notified the commissioner of their acceptance. The community shall notify the
162 commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive.
163 The municipal tax collecting authority shall certify to the commissioner the amount the
164 municipality has raised through June 30 by imposing a surcharge on its real property levy and
165 shall certify the percentage of the surcharge applied. In the event a municipality accepts this act

166 pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to
167 the commissioner by October 30th, the maximum additional funds the municipality intends to
168 transfer to the Community Preservation Fund from allowable municipal sources for the following
169 fiscal year. Once certified, the municipality may choose to transfer less than the certified amount
170 during the following fiscal year.

171 (b) The commissioner shall multiply the amount remaining in the fund after any
172 disbursements for operating and administrative expenses pursuant to section 9(c) by 80 per cent.
173 This amount distributed in the first round distribution shall be known as the match distribution.
174 The first round total shall be distributed to each city or town accepting said sections 3 to 7,
175 inclusive, in an amount not less than 75 per cent but not greater than 100 per cent of the total
176 amount raised by the additional surcharge on real property by each city or town and if applicable
177 the additional funds committed from allowable municipal sources pursuant to subsection (b 1/2) of
178 section 3. The percentage shall be the same for each city and town and shall be determined by
179 the commissioner annually in a manner that distributes the maximum amount available to each
180 participating city or town.

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

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

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

199 (f) After determining the CP rank for each municipality in the commonwealth, the
200 commissioner shall divide all municipalities into deciles according to their CP ranking, with
201 approximately the same number of municipalities in each decile, and with the municipalities with
202 the highest CP rank shall be placed in the lowest decile category, starting with decile 10.
203 Percentages shall be assigned to each decile as follows:

204 decile 1 140 per cent of the base figure

205 decile 2 130 per cent of the base figure

206 decile 3 120 per cent of the base figure

207 decile 4 110 per cent of the base figure

208 decile 5 100 per cent of the base figure

209 decile 6 90 per cent of the base figure

210 decile 7 80 per cent of the base figure

211 decile 8 70 per cent of the base figure

212 decile 9 60 per cent of the base figure

213 decile 10 50 per cent of the base figure

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

217 (f) Notwithstanding any other provision of this section, the total state contribution for each
218 city or town shall not exceed the actual amount raised by the municipality's surcharge on its real
219 property levy, and if applicable, additional funds committed from allowable municipal sources
220 pursuant to subsection b (1/2) of section 3.

221 (g) When there are monies remaining in the trust fund after the first and second round
222 distributions, and any necessary administrative expenses have been paid in accordance with
223 section 9, the commissioner may conduct a third round surplus distribution. Any remaining
224 surplus in the fund may be distributed by dividing the amount of the surplus by the number of
225 cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base
226 figure. The commissioner shall then use the decile categories and percentages as defined in this
227 section to determine a surplus equity distribution for each participant.

228 (h) The commissioner shall determine each participant's total state grant by adding the
229 amount received in the first round distribution with the amounts received in any later round or

230 rounds of distributions, with the exception of a city or town that has already received a grant
231 equal to 100 per cent of the amount the community raised by its surcharge on its real property
232 levy.

233 (1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection
234 (b) of section (3) and those cities and towns that adopt the maximum surcharge and additional
235 funds committed from allowable municipal sources such that the total funds are the equivalent of
236 3 per cent of the real estate tax levy against real property pursuant to subsection (b 1/2) of section
237 3 of this chapter shall be eligible to receive additional state monies through the equity and
238 surplus distributions.

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

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

245 SECTION 11. Section 12 of Chapter 44B is amended by striking it in its entirety and
246 inserting in place thereof the following:-

247 (a) A real property interest that is acquired with monies from the Community Preservation
248 Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184,
249 limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall
250 run with the land and shall be enforceable by the city or town or the commonwealth. The deed
251 restriction may also run to the benefit of a nonprofit, charitable corporation or foundation

252 selected by the city or town with the right to enforce the restriction. In the event that there is a
253 deed restriction placed on any real property pursuant to this chapter, the legislative body is
254 authorized to appropriate monies from the Community Preservation Fund to pay a non-profit
255 organization created pursuant to Chapter 180 to hold, monitor and enforce the deed restriction on
256 said property.

257 (b) Real property interests acquired under this chapter shall be owned and managed by the
258 city or town, but the legislative body may delegate management of such property to the
259 conservation commission, the historical commission, the board of park commissioners or the
260 housing authority, or, in the case of interests to acquire sites for future wellhead development by
261 a water district, a water supply district or a fire district. The legislative body may also delegate
262 management of such property to a nonprofit organization created under chapter 180 or chapter
263 203. The legislative body may also transfer ownership of such property acquired under this
264 chapter to a nonprofit organization created under chapter 180 or chapter 203, provided that in the
265 event of such a transfer, the municipality shall retain a permanent deed restriction pursuant to
266 Chapter 184 to maintain the property for the purpose it was authorized to be acquired for by the
267 legislative body. The legislative body may appropriate monies necessary to transfer ownership
268 of a property between two entities so long as a deed restriction is acquired and maintained by the
269 town or city.

270 SECTION 12. Section 16 of said Chapter 44B is hereby amended by striking paragraph (a)
271 and inserting in place thereof the following:-

272 (a) At any time after imposition of the surcharge, the legislative body may approve and the
273 voters may accept an amendment to the amount and computation of the surcharge, or to the

274 amount of exemption or exemptions, in the same manner and within the limitations set forth in
275 this chapter, including reducing the surcharge to 1 per cent and committing additional municipal
276 funds pursuant to subsection (b 1/2) of section 3.

277 SECTION 13. Notwithstanding any general or special law to the contrary, this Act shall
278 apply to all Community Preservation Fund appropriations approved by a city or town's
279 legislative body on or after the effective date of acceptance of the Community Preservation Act
280 in such city or town."