

SENATE No. 104

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

8 Section 2A. The general court hereby finds that there is a critical need to
9 protect and preserve the fundamental character of the communities of the commonwealth which
10 are currently at risk as a result of the loss of open space and park land, the loss and deterioration
11 of historic resources and the inadequate supply of decent and affordable housing for persons and
12 families of low and moderate income. The disproportionately high value of real estate
13 throughout the commonwealth has resulted in market incentives to develop open spaces, to
14 construct new buildings in place of older historic buildings, and to build high-priced residential

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

33 It is hereby further found that in cities and towns throughout the commonwealth
34 there is an inadequate supply of decent and affordable rental housing and housing which
35 provides an opportunity for home ownership, either directly or through a condominium or
36 cooperative form of ownership, for persons and families of low and moderate income. The high
37 cost of land and buildings as well as restrictive zoning and other approvals has produced a

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

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

59 It is hereby further found that the authority and powers conferred under this act
60 and the expenditure of public moneys pursuant thereto constitutes a serving of a valid public

61 purpose and that the enactment of the provisions hereinafter set forth is in the public interest and
62 is hereby so declared to be such as a matter of determination by the general court.

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

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

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

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

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

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

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

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

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

94 In each fiscal year, the legislative body shall make such appropriations from the
95 Community Preservation Fund as it deems necessary for the administrative and operating
96 expenses of the community preservation committee and for other administrative and operating
97 expenses incurred by the city or town resulting from its implementation of this chapter, but the
98 annual appropriations for such expenses shall not exceed an amount equal to 5 per cent of the
99 annual revenues deposited in the Community Preservation Fund.

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

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

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

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

111 (c) The state treasurer shall make all disbursements and expenditures from the
112 fund without further appropriation, as directed by the commissioner of revenue in accordance
113 with this section and with section 10. The department of revenue shall report by source all
114 amounts credited to said fund and all expenditures from said fund. The commissioner of revenue
115 shall assign personnel of the department as it may need to administer and manage the fund
116 disbursements and any expense incurred by the department for such purposes and any expense
117 incurred by the registers of deeds and the assistant recorders to administer and collect the
118 surcharges pursuant to section 8 shall be deemed an operating and administrative expense of the
119 program. The commissioner of revenue shall annually on October 15 direct the state treasurer to
120 disburse an amount not to exceed one-half of one percent of the annual total revenue received in
121 the preceding fiscal year from a register of deeds or an assistant recorder pursuant to the
122 provisions of section 8 to such register of deeds or assistant recorder to pay operating and
123 administrative expenses of the program certified to the commissioner by the register of deeds or
124 assistant recorder and to disburse an amount not to exceed 5 percent of the annual total revenue

125 received by the state treasurer in the preceding fiscal year under the provisions of said section 8
126 to the department to pay operating and administrative expenses of the program.

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

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

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

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

137 (a) Any real property interest acquired either in whole or in part with monies
138 from the Community Preservation Fund shall be bound by a permanent deed restriction that
139 meets the requirements of section 32 of chapter 184, limiting the use of the interest to the
140 purpose for which it was acquired; provided, however, that any permanent deed restriction solely
141 concerning a fee interest in real property that is acquired either in whole or in part with monies
142 from the Community Preservation Fund shall be exempt from the administrative approval
143 requirements of said section 32 of said chapter 184. The deed restriction shall run with the land
144 and shall be enforceable by the city or town or the commonwealth. A right to enforce the deed
145 restriction may also run to the benefit of a nonprofit, charitable corporation or foundation
146 selected by the city or town. Notwithstanding the provisions of this section to the contrary, if

147 any portion of community housing is financed by one or more third parties, public or private, that
148 are secured by a mortgage on the property, the deed restriction on any real property interest
149 acquired under this chapter for the purpose of creating, preserving or supporting such community
150 housing may be made subordinate to any such mortgage provided that any party with the right to
151 enforce the deed restriction shall be given a reasonable opportunity to cure the default prior to
152 termination of the deed restriction.

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

155 (b) Real property interests acquired under this chapter for the purpose of
156 acquiring, creating, preserving, rehabilitating or restoring open space or for the purpose of
157 acquiring, preserving, rehabilitating or restoring historic resources shall be owned and managed
158 by the city or town, but the legislative body may delegate management of such real property
159 interests to the conservation commission, the historical commission or the board of park
160 commissioners, as applicable, or to a nonprofit organization created under chapter 180 or chapter
161 203, or, in the case of interests to acquire sites for future wellhead development, such real
162 property interests may be owned and managed by a water district, a water supply district or a fire
163 district. Real property interests acquired under this chapter for the purpose of creating,
164 preserving, supporting, rehabilitating or restoring community housing may be owned or managed
165 or both by the city or town, the housing authority, any nonprofit organization established by
166 special act of the general court the principal purposes of which include the creation, preservation
167 or support of housing for persons or families of low or moderate income, any nonprofit
168 organization certified by the United States Department of Housing and Urban Development as a
169 community housing development organization, any community development corporation any

170 limited equity cooperative housing corporation established pursuant to chapter 157B of the
171 General Laws or any persons or families of low or moderate income, subject to the provisions of
172 section 12A.

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

175 Section 12A. (a) An objective of each undertaking for the creation, preservation
176 or support of community housing that is funded in whole or in part under this chapter shall be to
177 provide for decent and affordable housing for persons or families of low or moderate income.
178 Toward this end, community housing created, preserved or supported in whole or in part under
179 this chapter shall be made available only to persons or families of low or moderate income at a
180 rental cost or purchase price that is affordable for such individuals or families based on then
181 current affordability standards for persons or families of low or moderate income used by the
182 commonwealth or the federal government for programs established to finance affordable
183 housing. Cities and towns shall, to the extent reasonably able without jeopardizing financial
184 feasibility, take steps to ensure the continued occupancy of any community housing created,
185 preserved, supported, rehabilitated or restored in whole or in part under this chapter by persons
186 or families of low or moderate income or to recoup their investment in the property if the
187 housing is resold and occupied by persons or families who are not of low or moderate income.

188 (b) The community preservation committee shall seek to achieve and shall give
189 preference to opportunities for the creation, preservation, support, rehabilitation or restoration of
190 community housing that satisfy one or more of the following additional objectives: (1) the reuse
191 of existing buildings or the construction of new buildings on previously developed sites; (2) the

192 leveraging of community preservation funds to maximize other sources of funding; and (3) the
193 maximization of the number of housing units created, preserved or supported for persons and
194 families of low or moderate income.

195 (c) The community preservation committee shall adopt a policy for selecting
196 tenants and purchasers of community housing created, preserved, supported, rehabilitated or
197 restored from funding under this chapter. The policy shall state: (i) the eligibility and
198 application requirements for persons or families of low or moderate income interested in renting
199 or purchasing community housing created, preserved, supported, rehabilitated or restored under
200 this chapter; (ii) in the case of rental housing, the eligibility and reporting requirements for
201 continued tenancy of such community housing; (iii) and the priorities to be observed by the
202 owner or manager of the community housing in selecting residents or purchasers, including any
203 local preferences allowed under law. The resident and purchaser selection policy shall be subject
204 to, and the implementation of such policy shall be carried out in accordance with, the anti-
205 discrimination provisions of G.L. c.151B. Notwithstanding the provisions of this section to the
206 contrary, rental community housing owned or managed by the housing authority shall be subject
207 to the tenancy selection and continued occupancy requirements set forth in section 32 of chapter
208 121B.

209 (d) Except as otherwise provided in this chapter, any funds provided to a housing
210 authority under this chapter, or any real property or interest therein acquired under this chapter
211 and transferred to the housing authority for its ownership or management thereof, for the purpose
212 of creating, preserving, supporting, rehabilitating or restoring community housing shall be
213 applied by the housing authority to create, preserve, support, rehabilitate or restore community

214 housing pursuant to the powers granted to, and subject to the conditions and requirements
215 imposed upon, the housing authority under chapter 121B of the General Laws.

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

225 (f) Prior to recommending any funding for the creation, preservation, support,
226 rehabilitation or restoration of community housing to the legislative body of the city or town
227 pursuant to section 5(b)(2) of this chapter, the community preservation committee shall make the
228 following findings with respect to the proposed community housing: (i) that there exists a
229 shortage of decent and affordable housing available to persons and families of low and moderate
230 income within the city or town; (ii) that private enterprise alone cannot provide decent and
231 affordable housing to persons and families of low or moderate income without governmental
232 assistance; (iii) that the amount of city or town funding recommended for the undertaking is
233 reasonable in light of the number and quality of units of community housing to be created,
234 preserved or supported and in light of the other sources of funding likely to be available for the
235 undertaking; (iv) that the community housing created, preserved or supported as a result of the
236 undertaking will be affordable for persons or families of low or moderate income; (v) if the

237 undertaking involves the construction of new housing on a previously undeveloped site, that, in
238 the opinion of the community preservation committee, no reasonable opportunity then exists to
239 create an equal or greater number of units of community housing at the same cost to the city or
240 town by reusing an existing building then available or constructing the community housing on a
241 previously developed site within the city or town then available for the undertaking; and (vi) if
242 the community housing is to be owned or managed by a private entity or person, that any benefit
243 received by such entity or person as a result of the financial contribution made under this chapter
244 will be merely incidental to the public purpose served by such financial contribution.