

**SENATE . . . . . No. 625**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
\_\_\_\_\_

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  
2 Official Edition, is hereby amended by adding the following clause:-

3 (k) to collect and maintain information on the number of group home units in each  
4 community and report such information, including the location of such group home units, to the  
5 department of housing and community development on an annual basis. Such location shall be  
6 held by the department of 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  
8 appearing, is hereby amended by adding the following sentence:-

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

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

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

19 SECTION 4. Section 20 of chapter 40B of the General Laws is hereby amended by  
20 striking out section 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  
22 sections 20A to 23, inclusive, shall, unless a different meaning clearly appears from the context,  
23 have the following meanings:-

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

28 “Committee”, the housing appeals committee.

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

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

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

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

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

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

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

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

54           “Subsidy”, the provision of: direct financial assistance; indirect financial assistance  
55 including insurance, guarantees, or other means; in kind assistance; technical assistance; or of

56 other supportive services through a federal, state or local housing program to assist the  
57 construction of low or moderate-income housing.

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

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

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

78 Section 20A. Consistent with local needs.

79 Decisions and requirements by the zoning board of appeals shall be considered consistent  
80 with local needs if they are reasonable in view of the regional need for low or moderate income  
81 housing considered with the number of low and moderate income persons in the city or town  
82 affected and the need to protect the health or safety of the occupants of the proposed housing or  
83 of the residents of the city or town, to promote better site and building design in relation to the  
84 surroundings, or to preserve open spaces, and if such decisions and requirements are applied as  
85 equally as possible to both subsidized and unsubsidized housing. A zoning board of appeals is  
86 not required to grant waivers for use restrictions in zoning districts that are limited to industrial  
87 uses.

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

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

94 A proposed development shall be large scale if:

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

100           \*       in a city or town which has between 5,000 and 7,500 housing units exclusive, as  
101 so enumerated, the application for a comprehensive permit involves construction of more than  
102 250 housing units; or

103           \*       in a city or town which has between 2,500 and 5,000 housing units inclusive, as  
104 so enumerated, the application for a comprehensive permit involves construction of more than  
105 200 housing units; or

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

108           (3) The city or town has made recent progress toward attaining its affordable housing  
109 threshold. Recent progress toward its affordable housing threshold shall mean that the number of  
110 housing units that have been created during the twelve months prior to the date of the  
111 comprehensive permit application and that are eligible to be included on the subsidized housing  
112 inventory equal to or greater than 2 percent of the city or town's total housing units as  
113 enumerated in the most recent federal decennial census; or

114           (4) 12 months has not elapsed between the date of application for a comprehensive permit  
115 and the date of the most recent pendency of a prior application for a variance, special permit,  
116 subdivision or other approval related to construction on the same land if that prior application  
117 included no provision for low or moderate income housing, provided that any such application  
118 shall not be considered a prior application if it concerns only insubstantial changes to an existing  
119 use;

120           (5) the city or town has adopted an affordable housing plan approved by the department  
121 pursuant to which there is an increase in its number of low or moderate-income housing units

122 eligible for inclusion on the subsidized housing inventory by at least one-half of 1 percent of  
123 total units every calendar year until housing needs are met pursuant to this chapter, subject to  
124 paragraphs (a) and (b) below.

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

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

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

134           \*       the strategy by which the city or town will achieve its housing goals based upon  
135 its comprehensive needs assessment;

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

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

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

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

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

152 c. Upon submission to the department, the plan shall also be submitted to the regional  
153 planning district established pursuant to this chapter or the cape cod commission established  
154 pursuant to section 18 of chapter 716 of the laws of 1989 as amended, or the martha's vineyard  
155 commission established pursuant to chapter 831 of the laws of 1977, within such district or  
156 commission area such project is located or any other regional planning district hereafter  
157 established by the general court, which shall have 30 days to comment to the department on the  
158 implications of the plan for housing need, growth and development concerns, and other relevant  
159 matters. Within 90 days after its submission to the department by a city or town's chief executive  
160 officer, the department shall approve the plan if it meets the requirements specified herein,  
161 otherwise, it shall disapprove the plan. The department shall notify the city or town of its  
162 decision to either approve or disapprove a plan in writing. If the department disapproves a plan,



163 the notification shall include a statement of reasons for the disapproval. A city or town that  
164 originally submitted a plan that had been disapproved may submit a new or revised plan to the  
165 department at any time. A city or town may amend its plan from time to time if the department  
166 approves the amendment. If the department fails to mail notice of approval or disapproval of a  
167 plan or plan amendment within 90 days after its receipt, the plan or plan amendment shall be  
168 deemed to be approved.

169 d. The department shall certify annually whether a city or town is in compliance with an  
170 approved plan. The department shall determine whether a city or town is in compliance within 30  
171 days of receipt of a city or town's request for such a certification. A city or town shall be in  
172 compliance if it has reached the benchmarks established in its approved plan and has made all  
173 changes necessary to accommodate future planned development. If the department determines  
174 the city or town is in compliance with its plan, the certification shall be retroactive to the date the  
175 certification was requested. Provided further if a city or town fails to achieve the goals  
176 established in the approved plan and as documented on the subsidized housing inventory the city  
177 or town shall not be in compliance with its plan and shall submit a new plan for certification by  
178 the department.

179 e. Units which were created and which became eligible to be counted toward a city or  
180 town's affordable housing threshold between August 1, 2002 and December 31, 2002 shall be  
181 credited toward the city or town's affordable housing threshold for the first year of planned  
182 production under an approved affordable housing plan, regardless of the date the plan is  
183 submitted to or certified by the department. An approved plan shall take effect for the purpose of  
184 the definition of consistent with local needs in this section only when the department certifies  
185 that the city or town has approved permits resulting in an initial annual increase in its low-or

186 moderate-income housing units of at least one-half of 1 percent of total housing units in  
187 accordance with its plan. It is the responsibility of the city or town to request such certification  
188 from the department. Once the department has made such a certification of initial compliance  
189 and subsequent annual certifications of compliance:

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

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

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

201 (6) the board has approved 3 or more comprehensive permits, at least 3 of which contain  
202 20 or more housing units each within 12 months preceding the filing of an application for a  
203 comprehensive permit and those permits have become final.

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

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

207 (a) Comprehensive permit requirements.

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

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

230 profit in the projects and the local municipality is permitted to monitor an applicant's compliance  
231 with its limited dividend obligations.

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

234 \* The applicant shall control the site.

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

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

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

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

- 244 1. the name and address of the applicant;
- 245 2. the address of the site and site description;
- 246 3. the number and type (homeownership or rental) of housing units proposed;
- 247 4. the name of the housing program or programs under which project eligibility is  
248 sought; and

249           5.       relevant details of the particular project if not mandated by the housing program,  
250 including the percentage of units for low or moderate income households, income eligibility  
251 standards, the duration of use restrictions requiring occupancy by low or moderate income  
252 households, and the limited dividend status of the developer;

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

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

256           2.       that the subsidizing agency has performed an on-site inspection of the site and has  
257 reviewed pertinent information submitted by the applicant;

258           3.       that the proposed housing design and density are generally appropriate for the site  
259 on which it is located, taking into account surrounding land uses, proximity to transportation,  
260 services and public utilities, and design to minimize land use impacts;

261           4.       that the proposed project appears financially feasible within the housing market in  
262 which it will be situated, based on comparable rentals or sales figures;

263           5.       that an initial pro forma has been reviewed and the project appears financially  
264 feasible on the basis of estimated development costs; and

265           F. that the developer of the proposed project meets the general eligibility standards of the  
266 housing program or programs.

267           \*       In addition to the foregoing, a subsidizing agency shall consider the following in  
268 making a determination of project eligibility: overall density and size; environmental impact,  
269 including watersheds and existing land uses; consistency with principles of smart growth; impact

270 on historical resources; the impact of other pending applications for housing development; and  
271 other local concerns of the city or town where the project is located.

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

275 \* Within 10 days of filing the application for a determination of project eligibility  
276 the applicant shall provide written notice and a copy of such application to the chief executive  
277 officer of the involved city or town and to the members of the general court representing such  
278 city or town. The applicant shall also provide written notice of the application to the planning  
279 board, board of health, conservation commission, water and sewer district, fire and police..  
280 Within 30 days after such notice, the chief executive officer or designee of the chief executive  
281 officer may schedule and hold a meeting at a location within the involved city or town. The  
282 meeting shall be chaired by the city or town's chief executive officer or designee and shall be  
283 attended by the applicant or its representative. Representatives from local boards are encouraged  
284 to attend the meeting and provide written comment. The purpose of the meeting is to allow the  
285 applicant and the city or town representatives to informally discuss the preliminary proposal so  
286 that the parties involved can develop an understanding of the proposal and to respond to  
287 concerns raised in an effort to achieve an outcome that meets the needs of the involved city or  
288 town as well as the applicant. In addition, a representative from a public or quasi-public housing  
289 agency, or a regional planning agency within the regional planning district or its designee  
290 knowledgeable with respect to chapter 40B may provide technical assistance on topics including,  
291 but not limited to, site design and density, open space, marketing, use restrictions, allowable  
292 costs and profit limitations. Following the close of the meeting, the chief executive officer of the

293 city or town, local boards, and the regional planning district may issue written comments within  
294 14 days to the subsidizing agency. Project eligibility determinations must be made within 90  
295 days from receipt of the municipality's comments.

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

299 (vii) An applicant which has obtained a determination of project eligibility shall be  
300 presumed to be eligible to submit an application for comprehensive permit or to file or maintain  
301 an appeal before the committee. Nothing set forth in this section 20B shall be deemed to confer  
302 upon any city or town, or any of its boards, committees, commissions or officials, or upon any  
303 other person the right to appeal or judicial review in any form the determination of project  
304 eligibility by the subsidizing agency, it being intended that the rights of appeal conferred by  
305 sections 21 and 22 of this chapter shall be the exclusive remedy for any party aggrieved by the  
306 issuance or denial of any comprehensive permit hereunder.

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

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

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

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

325 (b) Local Action Prerequisite to Appeal.

326 In order to appeal to the committee, an applicant shall have applied to the board for a  
327 comprehensive permit in accordance with section 21 of this chapter and shall have been denied  
328 such permit or shall have been granted such permit with conditions which it alleges make the  
329 building or operation of such housing uneconomic.

330 (c) Local progress toward affordable housing threshold.

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

334 i. Rental Housing Units: (a) If at least 25 percent of housing units within a development  
335 are restricted to serve low or moderate-income households, 100 percent of housing units within



336 the development shall be eligible to be included toward the city or town's affordable housing  
337 threshold. If fewer than 25 percent of housing units within a development are restricted to serve  
338 low or moderate-income households, only those units which serve low or moderate-income  
339 households shall be eligible to be included toward the city or town's affordable housing  
340 threshold or (b) if at least 20 percent of housing units within a development are restricted to  
341 serve households with household income at or below 50 percent of area median income, 100  
342 percent of housing units within the development shall be eligible to be included toward the city  
343 or town's affordable housing threshold. If fewer than 25 percent of housing units within a  
344 development are restricted to serve low or moderate-income households, only such restricted  
345 units shall be eligible to be included toward the city or town's affordable housing threshold;

346       ii. Homeownership Units: (a) if at least 25 percent of housing units within a development  
347 are restricted to serve low or moderate-income households, 2 times the actual number of such  
348 restricted units, not to exceed the total number of homeownership units authorized by the permit  
349 shall be included toward the city or town's affordable housing threshold or (b) if at least 20  
350 percent of housing units within a development serve households earning at or below 50 percent  
351 of area median income, 2 times the actual number of units serving such households, not to  
352 exceed the total number of homeownership units authorized by the permit shall be included  
353 toward the city or town's affordable housing threshold. If fewer than 25 percent of housing units  
354 within a development are restricted to serve low or moderate-income households, only such units  
355 which are restricted to serve low or moderate-income households shall be eligible to be included  
356 toward the city or town's affordable housing threshold;

357       iii. Community Preservation Act Housing Units: any community housing, as defined in  
358 chapter 44B which is restricted to occupancy by persons of low or moderate income households,

359 provided further, that such housing payment exclusive of utilities shall not exceed 30 percent of  
360 monthly income of a household at or below 80 percent of area median income, adjusted for  
361 household size, shall be eligible to be included toward the city or town's affordable housing  
362 threshold;

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

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

374           vi. Local Housing Units: housing units created under a local program or subsidy or which  
375 qualify as local initiative units pursuant to regulations promulgated by the department and  
376 restricted to serve low or moderate income households as defined in this chapter shall be eligible  
377 to be included toward the city or town's affordable housing threshold as documented on the  
378 subsidized housing inventory; and

379           vii. Urban Center Housing Tax Increment Financing Units: low or moderate income  
380 housing created pursuant to section 60 of chapter 40 provided further, that such housing payment

381 exclusive of utilities shall not exceed 30 percent of monthly household income of a household  
382 earning at or below 80 percent of area median income shall be eligible to be included toward the  
383 city or town's affordable housing threshold.

384           viii. Expiring Use Units: In instances where housing units were developed to serve low or  
385 moderate income households and the use restriction has expired as a result of refinancing or  
386 operation of law or otherwise, the department shall have the discretion to count such units  
387 pursuant to guidelines promulgated by the department toward a city or town's affordable housing  
388 threshold as recorded in the subsidized housing inventory. The approved affordable units in any  
389 project under G.L. c. 40B, Sections 20-23, shall remain affordable for the longer of: (a) the term  
390 of affordability contained in a recorded restriction; or (2) the time which such project remains  
391 non-compliant with the city or town's zoning ordinances or bylaws.

392           (d) Subsidized Housing Inventory.

393           The department shall maintain an inventory of low or moderate income housing units.  
394 Such inventory shall be published biennially, provided further that such inventory shall be  
395 updated for a specific city or town upon request by such city or town. Housing units authorized  
396 by a comprehensive permit or special permit shall be eligible to be included toward a city or  
397 town's affordable housing threshold as recorded on the subsidized housing inventory when the  
398 comprehensive permit or special permit becomes final, provided that housing units for which  
399 building permits have not been issued within 1 year of the date when the comprehensive permit  
400 or special permit became final shall no longer be eligible to be counted toward the city or town's  
401 affordable housing threshold until the building permits have been issued. The department may  
402 for good cause waive such time requirement. Low or moderate income housing units not

403 authorized pursuant to a comprehensive permit or special permit shall be eligible to be counted  
404 toward the city or town's affordable housing threshold when a building or occupancy permit is  
405 issued.

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

408 Section 20C. A city or town, pursuant to sections 20 through 23 of chapter 40B, with a  
409 pending comprehensive permit for an application of development of housing, that shares a  
410 contiguous border to an adjacent city or town may propose to enter into an agreement with such  
411 city or town to share infrastructure and service costs associated with such development. Pursuant  
412 to such agreement, if such infrastructure and service costs are shared by a city or town, both  
413 cities and towns may share in counting such units towards their affordable housing threshold  
414 pursuant to sections 20 through 23 of chapter 40B. Any such proposed agreement shall be  
415 subject to approval by the department of housing and community development, which shall set  
416 forth guidelines for such agreements. Provided further such cities and towns may provide for a  
417 joint application to each city or town for a comprehensive permit application and provide for a  
418 joint hearing process for consideration of such joint application by such local zoning boards.

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

421 Section 20D. The Massachusetts Housing Partnership Fund board, as established by  
422 section 35 of chapter 405 of the acts of 1985, or its designee, shall make technical assistance  
423 available to local zoning boards of appeal to assist in their review of applications for  
424 comprehensive permits. No subsidizing agency shall issue a determination of project eligibility

425 or site approval unless a fee to defray the costs of such technical assistance program has been  
426 collected from the applicant and remitted to the Massachusetts Housing Partnership Fund board  
427 in accordance with a fee schedule adopted by the department.

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

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

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

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

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

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

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

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

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

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

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

466           SECTION 13. This act shall become effective immediately upon passage.

467