

SENATE No. 653

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Reforming Chapter 40B..

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. Chapter 40B of the Massachusetts general laws is hereby amended by
2 striking out section 20, as appearing in the 2004 Official Edition, and inserting in place thereof
3 the following section:- Definitions

4 The following words, wherever used in this section and in sections twenty-one to twenty-
5 three, inclusive, shall, unless a different meaning clearly appears from the context, have the
6 following meanings:--

7 "Low or moderate income housing", any housing subsidized by the federal or state
8 government under any program to provide direct financial assistance for the construction of low
9 or moderate income housing as defined in the applicable federal or state statute, whether built or
10 operated by any public agency or any nonprofit or limited dividend organization. No projects
11 proposed under Sections 20-23 of this chapter shall be considered low or moderate income
12 housing unless at least 33% of the total number of homes proposed are restricted for sale to "low
13 or moderate income households," as such term is defined by the Department of Housing and
14 Community Development (the "Department").

15 "Uneconomic", any condition brought about by any single factor or combination of
16 factors to the extent that it makes it impossible for a public agency or nonprofit organization to
17 proceed in building or operating low or moderate income housing without financial loss, or for a
18 limited dividend organization to proceed and still realize a reasonable return on its actual costs of
19 development in building or operating such housing within the limitations set by the subsidizing
20 agency of government on the size or character of the development or on the amount or nature of
21 the subsidy or on the tenants, rentals and income permissible, and without substantially changing
22 the rent levels and units sizes proposed by the public, nonprofit or limited dividend
23 organizations. In calculating an applicant's reasonable return, an applicant will be limited to the
24 lesser of its actual costs or the fair market value of such costs or services. In no event shall
25 Limited Dividend entities be permitted to earn in excess of a 20% profit on sale-based projects or
26 in excess of a 10% profit per year on rental projects. All profits in excess of such amount shall
27 be paid to the municipality for the exclusive purpose of facilitating the development or
28 maintenance of affordable housing.

29 "Consistent with local needs", requirements and regulations shall be considered
30 consistent with local needs if they are reasonable in view of the regional need for low and
31 moderate income housing considered with the number of low income persons in the city or town
32 affected and the need to protect the health or safety of the occupants of the proposed housing or
33 of the residents of the city or town, to promote better site and building design in relation to the
34 surroundings, or to preserve open spaces, and if such requirements and regulations are applied as
35 equally as possible to both subsidized and unsubsidized housing. Requirements or regulations
36 shall be consistent with local needs when imposed by a board of zoning appeals after
37 comprehensive hearing in a city or town where (1) low or moderate income housing exists which

38 is in excess of ten per cent of the housing units reported in the latest federal decennial census of
39 the city or town or on sites comprising one and one half per cent or more of the total land area
40 zoned for residential, commercial or industrial use or (2) the application before the board would
41 result in the commencement of construction of such housing on sites comprising more than three
42 tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar
43 year; provided, however, that land area owned by the United States, the commonwealth or any
44 political subdivision thereof, the metropolitan district commission or any public authority shall
45 be excluded from the total land area referred to above when making such determination of
46 consistency with local needs. In determining whether a project is consistent with local needs, a
47 presiding zoning board of appeals may rely upon accepted standards for municipal planning and
48 environmental protection, as may be contained within the Town's duly adopted Master Plan or
49 Certified Housing Plan or as may adopted or promoted by, the Department or any other State
50 agency or Regional Planning Commission. Any requested waivers from local regulations and
51 requirements shall be limited to the dimensional criteria under Zoning By-laws and Regulations
52 for the Subdivision of Land. No application for a permit under G.L. c. 40B, §§20-23 shall
53 propose more than twice the amount of housing units than would be permitted under existing by-
54 laws and regulations.

55 "Local Board", any town or city board of survey, board of health, board of subdivision
56 control appeals, planning board, building inspector or the officer or board having supervision of
57 the construction of buildings or the power of enforcing municipal building laws, or city council
58 or board of selectmen.