

**SENATE . . . . . No. 90**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act to sustain 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 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  
33 funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect,  
34 but may be reduced pursuant to section 16.

35 SECTION 3: Section 3 of said chapter 44B is hereby amended by inserting after  
36 paragraph e (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  
40 the Acts of 2006 is hereby amended by striking paragraph (b)(2) in its entirety and inserting in  
41 place 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,  
56 the 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  
63 and inserting in place thereof the following:-

64 Section 6. In every fiscal year and upon the recommendation of the community  
65 preservation committee, the legislative body shall spend, or set aside for later spending, not less  
66 than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not  
67 less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of  
68 the annual revenues for community housing. In each fiscal year, the legislative body shall make  
69 such 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  
79 that year or later years, but funds set aside for a specific purpose shall be spent only for the  
80 specific purpose. Any funds set aside may be expended in any city or town in the

81 commonwealth. The community preservation funds shall not replace existing operating funds,  
82 only augment them.

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

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

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

93 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid  
94 when the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20.  
95 The fees for so recording, filing or depositing a municipal lien certificate shall be subject to a  
96 surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation.  
97 No surcharge shall apply to a declaration of homestead under chapter 188 or to the filing of a  
98 third mortgage or fourth mortgage extended by any public agency or quasi public agency,  
99 including but not limited to a Commonwealth municipality or the Massachusetts Housing  
100 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,  
101 abstract cards, additional square feet for the filing and recording of plans or for additional or  
102 required marginal references.(b) The fees of the assistant recorder, except as otherwise provided,

103 to be paid when the instrument is left for registering, filing or entering with respect to registered  
104 land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a  
105 municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed  
106 for the purposes of community preservation. No surcharge shall apply to a declaration of  
107 homestead of chapter 188 or to the filing of a third mortgage or fourth mortgage extended by any  
108 public agency, including but not limited to a Commonwealth municipality or the Massachusetts  
109 Housing Partnership. No surcharge shall apply to the fees charged for additional lots shown on  
110 plans, for indexing instruments recorded while a petition for registering is pending, for additional  
111 certificates of sewer assessments, for old age assistance liens, for duplicates and for  
112 photocopies.(c) Notwithstanding subsections (a) and (b) of section 8, in the event that the  
113 Massachusetts Community Preservation Trust Fund balance is insufficient to support a 75% first  
114 round match distribution pursuant to section 10 for all cities and towns that have accepted  
115 sections 3 to 7 inclusive, as certified by the commissioner of revenue on October 1st of each  
116 year, the fees of the registry of deeds and fees of the assistant recorder to be paid when the  
117 instrument is left for recording, filing or deposit and the fee for so recording, filing or depositing  
118 a municipal lien certificate shall be subject to a surcharge to be determined by the commissioner  
119 of the department of revenue necessary to support, by the commissioner's best reasonable  
120 estimate, a 75% first round match for the following fiscal year, with each fee rounded to the  
121 nearest dollar.Under no circumstances shall each fee surcharge to be paid to the register of deeds  
122 or assistant recorder when the instrument is left for recording, filing or deposit for community  
123 preservation be greater than \$70. Under no circumstances shall each fee surcharge paid to the  
124 register of deeds or assistant recorder for so recording, filing or depositing a municipal lien  
125 certificate for community preservation be greater than \$40.The surcharges shall be imposed for

126 the purposes of community preservation. No community preservation surcharges shall apply to a  
127 declaration of homestead under chapter 188 to the filing of a third mortgage or fourth mortgage  
128 extended by any public agency, including but not limited to a Commonwealth municipality or  
129 the Massachusetts Housing Partnership. No surcharge shall apply to the fees charged for  
130 additional pages, photostatic copies, abstract cards, additional square feet for the filing and  
131 recording of plans or for additional or required marginal references. (d) Each fiscal year, the  
132 commissioner of the department of revenue shall certify the fees pursuant to section 8. The  
133 commissioner of revenue shall notify the registers of deeds, the assistant recorders, and the joint  
134 committee on revenue of the change at least ninety days prior to the first day of the fiscal year.(e)  
135 All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts  
136 Community Preservation Trust Fund, established in section 9.

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

139 (c) The state treasurer shall make all disbursements and expenditures from the fund  
140 without further appropriation, as directed by the commissioner of revenue in accordance with  
141 said section 10. The department of revenue shall report by source all amounts credited to said  
142 fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of  
143 the department as it may need to administer and manage the fund disbursements and any expense  
144 incurred by the department for such purposes and any expense incurred by the registers of deeds  
145 and the assistant recorder to administer and collect the surcharges pursuant to section 8 shall be  
146 deemed an operating and administrative expense of the program. The commissioner of revenue  
147 shall annually on October 15th direct the state treasurer to disburse an amount not to exceed one-  
148 half of one per cent of the annual total revenue received in the preceding fiscal year from a

149 register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register  
150 of deeds or assistant recorder to pay operating and administrative expenses of the program  
151 certified to the commissioner by the register of deeds or assistant recorder and to disburse an  
152 amount not to exceed 5 per cent of the annual total revenue received by the state treasurer in the  
153 preceding fiscal year under the provisions of said section 8 to the department of revenue to pay  
154 total operating and administrative expenses of the program.

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

157 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse  
158 monies from the fund established in section 9 to cities and towns that have accepted sections 3 to  
159 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the  
160 commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive.  
161 The municipal tax collecting authority shall certify to the commissioner the amount the  
162 municipality has raised through June 30 by imposing a surcharge on its real property levy and  
163 shall certify the percentage of the surcharge applied. In the event a municipality accepts this act  
164 pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to  
165 the commissioner by October 30th, the maximum additional funds the municipality intends to  
166 transfer to the Community Preservation Fund from allowable municipal sources for the following  
167 fiscal year. Once certified, the municipality may choose to transfer less than the certified amount  
168 during the following fiscal year.

169 (b) The commissioner shall multiply the amount remaining in the fund after any  
170 disbursements for operating and administrative expenses pursuant to section 9(c) by 80 per cent.

171 This amount distributed in the first round distribution shall be known as the match distribution.  
172 The first round total shall be distributed to each city or town accepting said sections 3 to 7,  
173 inclusive, in an amount not less than 75 per cent but not greater than 100 per cent of the total  
174 amount raised by the additional surcharge on real property by each city or town and if applicable  
175 the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of  
176 section 3. The percentage shall be the same for each city and town and shall be determined by  
177 the commissioner annually in a manner that distributes the maximum amount available to each  
178 participating city or town.

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

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

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

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

201 Percentages shall be assigned to each decile as follows:

202	decile 1	140 per cent of the base figure
203	decile 2	130 per cent of the base figure
204	decile 3	120 per cent of the base figure
205	decile 4	110 per cent of the base figure
206	decile 5	100 per cent of the base figure
207	decile 6	90 per cent of the base figure
208	decile 7	80 per cent of the base figure
209	decile 8	70 per cent of the base figure
210	decile 9	60 per cent of the base figure
211	decile 10	50 per cent of the base figure

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

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

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

226           (h) The commissioner shall determine each participant's total state grant by adding the  
227 amount received in the first round distribution with the amounts received in any later round or  
228 rounds of distributions, with the exception of a city or town that has already received a grant  
229 equal to 100 per cent of the amount the community raised by its surcharge on its real property  
230 levy.

231           (1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection  
232 (b) of section (3) and those cities and towns that adopt the maximum surcharge and additional  
233 funds committed from allowable municipal sources such that the total funds are the equivalent of

234 3 per cent of the real estate tax levy against real property pursuant to subsection (b 1/2) of section  
235 3 of this chapter shall be eligible to receive additional state monies through the equity and  
236 surplus distributions.

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

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

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

245 (a) A real property interest that is acquired with monies from the Community  
246 Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of  
247 chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed  
248 restriction shall run with the land and shall be enforceable by the city or town or the  
249 commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable  
250 corporation or foundation selected by the city or town with the right to enforce the restriction. In  
251 the event that there is a deed restriction placed on any real property pursuant to this chapter, the  
252 legislative body is authorized to appropriate monies from the Community Preservation Fund to  
253 pay a non-profit organization created pursuant to Chapter 180 to hold, monitor and enforce the  
254 deed restriction on said property.

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

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

270 (a) At any time after imposition of the surcharge, the legislative body may approve and  
271 the voters may accept an amendment to the amount and computation of the surcharge, or to the  
272 amount of exemption or exemptions, in the same manner and within the limitations set forth in  
273 this chapter, including reducing the surcharge to 1 per cent and committing additional municipal  
274 funds pursuant to subsection (b 1/2) of section 3.

275 SECTION 13. Notwithstanding any general or special law to the contrary, this Act shall  
276 apply to all Community Preservation Fund appropriations approved by a city or town's

277 legislative body on or after the effective date of acceptance of the Community Preservation Act  
278 in such city or town.”