

HOUSE No. 3382

The Commonwealth of Massachusetts

PRESENTED BY:

Paul McMurtry

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

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

An Act creating a state appeal board for the purposes of serving those small business owners who feel the Board of Health or Building Department have treated them unfairly on a local level.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

HOUSE No. 3382

By Mr. McMurtry of Dedham, a petition (accompanied by bill, House, No. 3382) of Paul McMurtry and others for legislation to authorize a board of appeal for small business owners on denial of local permits. Community Development and Small Businesses.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act creating a state appeal board for the purposes of serving those small business owners who feel the Board of Health or Building Department have treated them unfairly on a local level.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 40 of the General Laws, as appearing in the 2012 Official Edition, is hereby
2 amended by adding the following section:-

3 Section 70. (a)The following words shall unless a contrary intention clearly appears, have
4 the following meanings:-

5 “Board”, the board of appeal for small business owners.

6 “Local permit”, a permit issued by a local permit authority pursuant to the general laws or
7 authorized by special legislative act.

8 “Local permit authority”, a board of health, a regional board of health or department of
9 health established by the general laws or authorized by special legislative act; a building
10 department of a city or town; or a historic district commission established by the general laws or
11 authorized by special legislative act.

12 “Small business or small business owners”, a business entity, including its affiliates, that:
13 (i) is independently owned and operated; (ii) has a principal place of business in the
14 commonwealth; and (iii) would be defined as a “small business” under applicable federal law, as
15 established in the United States Code and promulgated from time to time by the United States
16 Small Business Administration.

17 (b) There shall be a board of appeal for small business owners on denial of local permits.
18 The board shall be within, but not subject to, the department of housing and economic
19 development consisting of the secretary of housing and economic development, the secretary of
20 public safety and the commissioner of public health.

21 The secretaries of housing and economic development and public safety may by a
22 writing, in such form as he or she may prescribe, filed in his or her office, designate from time to
23 time a representative to act in his place, the commissioner of public health may in like manner
24 designate from time to time a representative to act in his or her place. Any such designation may
25 be revoked at any time and may run for such period as the designating officer may prescribe. The
26 compensation of such a representative, if not an employee of the commonwealth, shall be fixed
27 by the board, subject to the approval of the governor and council. The secretary of housing and
28 economic development or his or her representative shall be the chairman of the board.

29 (c) With the approval of the governor and council, the board may appoint and remove a
30 secretary and such clerical and other assistants as its work may require. The secretary so
31 appointed shall be eligible to serve also as the representative of the secretary of housing and
32 economic development, if designated as aforesaid. All expenditures incurred under this section
33 shall be paid from the Housing and Economic Development Trust Fund established by section

34 16I of chapter 6A. The secretary shall keep a record of all proceedings before the board, and the
35 secretary and such clerical and other assistants shall perform such duties as the board may direct.
36 Any member of the board shall have power to summon and compel the attendance and testimony
37 of witnesses and the production of books, records and documents and may administer oaths.
38 Sections 9 and 11 of chapter 233 shall apply to the board and witnesses summoned before it. The
39 fees of witnesses before the board for attendance and travel shall be the same as for witnesses
40 before a court in civil cases and need not be paid nor tendered to them prior to their attendance,
41 and shall be paid by the commonwealth upon the certificate of the board or a member thereof
42 filed with the comptroller.

43 (d) An office and a room for hearings shall be provided by the commonwealth, to be
44 assigned by the governor and council. The board may hold hearings at any place within the
45 commonwealth and the members and secretary thereof shall be allowed their necessary traveling
46 and other expenses in holding hearings outside the city of Boston. The board, with the approval
47 of the governor and council, may make and amend reasonable rules and regulations to set forth
48 the standards in subsection (e), expedite, and regulate hearings and the procedure before it.

49 (e) Whenever an application by a small business for a local permit is unreasonably denied
50 or is granted with such conditions and requirements to make the operation of the permit
51 uneconomic for the small business owner, the small business owner shall have the right to appeal
52 to the board for a review of the same. Such appeal shall be taken within 20 days after the date of
53 the notice of the decision by the local permit authority by filing with the board a statement of the
54 prior proceedings and the reasons upon which the appeal is based. The board shall forthwith
55 notify the local permit authority of the filing of such petition for review and the latter shall,
56 within 10 days of the receipt of such notice, transmit a copy of its decision and the reasons

57 therefor to the board. Such appeal shall be heard by the board within 20 days after receipt of the
58 applicant's statement. A stenographic record of the proceedings shall be kept and the board shall
59 render a written decision, based upon a majority vote, stating its findings of fact, its conclusions
60 and the reasons therefor within 30 days after the termination of the hearing, unless such time
61 shall have been extended by mutual agreement between the board and the applicant. Such
62 decision may be reviewed in the superior court in accordance with the provisions of chapter 30A.
63 No further review shall be had.

64 (f) The hearing by the board in the executive office of housing and economic
65 development shall be limited to the issue of whether, in the case of the denial of an application,
66 the decision of the local permit authority was reasonable and consistent with local needs and, in
67 the case of an approval of a permit to a small business with conditions and requirements
68 imposed, whether such conditions and requirements make the operation of the permit
69 uneconomic.

70 (g) If the committee finds, in the case of a denial, that the decision of the local permit
71 authority was unreasonable to the small business owner, it shall vacate such decision and shall
72 direct the board to issue a permit or approval to the small business.

73 (h) If the board finds, in the case of an approval with conditions and requirements
74 imposed, that the decision of the local permit authority makes the operation of the permit
75 uneconomic, it shall order the local permit authority to modify or remove any such condition or
76 requirement so as to make the proposal no longer uneconomic to the small business and to issue
77 any necessary permit or approval; provided, however, that the committee shall not issue any

78 order that would allow the operation of the permit with standards less safe than the applicable
79 permitting requirements pursuant to the general laws.

80 (i) The board or the small business shall have the power to enforce the orders of the board
81 at law or in equity in the superior court. The local permit authority shall carry out the order of the
82 board within 30 days of its entry and, upon failure to do so, the order of board shall, for all
83 purposes, be deemed to be the action of the local permit authority, unless the small business
84 owner consents to a different decision or order by such local permit authority.