

SENATE No. 715

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 relative to manufactured housing communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>6/25/2015</i>

SENATE No. 715

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 715) of Marc R. Pacheco and Thomas J. Calter for legislation relative to manufactured housing communities. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 610 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act relative to manufactured housing communities.

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 6 of the General Laws, as appearing in the 2014 Official Edition, is
2 hereby amended by striking out section 108 and inserting in place thereof the following section:-

3 Section 108. There shall be a manufactured housing commission, hereinafter referred to
4 as the “commission”. The commission shall consist of five members, not more than three of
5 whom shall be of the same political party, and two alternate members. The governor shall
6 appoint three members: one of whom shall be a resident of a manufactured housing community;
7 one of whom shall be an owner of a manufactured housing community; and one of whom shall
8 be an attorney authorized to practice law in the commonwealth with experience in legal issues
9 regarding manufactured housing, landlord-tenant law, or real estate law, and who shall not be a
10 resident or owner of a manufactured housing community. The governor shall appoint two

11 alternate members, one of whom shall be a resident of a manufactured housing community; and
12 one of whom shall be an owner of a manufactured housing community. The alternate resident-
13 member shall not reside in the same community as the resident-member of the commission and
14 the alternate owner-member shall not have an ownership interest in the same community as the
15 owner-member of the commission. The attorney general and director of the department of
16 housing and community development shall each appoint one member who shall be an attorney
17 authorized to practice law in the commonwealth with experience in legal issues regarding
18 manufactured housing, landlord-tenant law, or real estate law, and who shall not be a resident or
19 owner of a manufactured housing community. In the event that the governor, attorney general or
20 director cannot appoint an attorney with said experience, the governor, the attorney general, or
21 the director may appoint an attorney with experience in mediation or alternative dispute
22 resolution programs. Each member shall serve a term of 2 years and may be reappointed upon
23 expiration of his term.

24 Any member or alternate member of the commission may be removed by the governor
25 for neglect of duty, misconduct, malfeasance or misfeasance after being given a written
26 statement of the charges against him and sufficient opportunity to be heard thereon.

27 SECTION 2. Chapter 29 of the General Laws, as so appearing, is hereby amended by
28 inserting after section 2BBBB the following new section:-

29 Section 2CCCC. There shall be established and set up on the books of the commonwealth
30 a separate fund to be known as the Manufactured Housing Trust Fund, hereinafter referred to as
31 the “fund”. The fund shall be administered by the secretary of the executive office for
32 administration and finance, and shall be credited with licensing revenues collected in accordance

with section 32B1/2 of chapter 140 and fees collected in accordance with paragraph (c) of section 30T of chapter 140 and any interest thereon. Amounts credited to the fund shall be expended, without further appropriation, to support the manufactured housing dispute resolution program described in section 32T of said chapter 140, including, but not limited to, compensation of commission members, as determined by the secretary of the executive office for administration and finance, based on time actually expended on dispute resolution under the program described in section 32T of chapter 140, and to support funding of court appointed receiverships of manufactured housing communities.

SECTION 3. Section 32A of chapter 140, as so appearing, is hereby amended by striking out the words “under the following section” and inserting in place thereof the following:- the following two sections.

SECTION 4. Said Chapter 140, as so appearing, is hereby amended by striking out section 32B and inserting in place thereof the following two new sections:-

Section 32B. The board of health of any city or town, in each instance after a hearing, reasonable notice of which shall have been published once in a newspaper published in such city or town, may grant, and may suspend or revoke, licenses for recreational camps, overnight camps or cabins, or motels located within such city or town, which license, unless previously suspended or revoked, shall expire on December thirty-first in the year of issue, but may be renewed annually upon application without such notice and hearing. Unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, the fee for each original or renewal license shall be ten dollars, but in no event

shall any such fee be greater than fifty dollars. Such board of health shall at once notify the department of environmental protection of the granting or renewal of such a license, and said department shall have jurisdiction to inspect the premises so licensed to determine that the sources of water supply and the works for the disposition of the sewage of such premises are sanitary. If upon inspection of such premises said department finds the sources of water supply to be polluted or the works for the disposition of the sewage to be unsanitary, or both of such conditions, said department shall forthwith notify such board of health and such licensee to that effect by registered mail and said board shall forthwith prohibit the use of any water supply found by said department to be polluted. Unless such licensee shall, within thirty days following the giving of such notice, correct the conditions at such premises to the satisfaction of both said department and such board the license so granted shall be suspended or revoked by such board. Any license so suspended may be reinstated by such board when the conditions at such premises, as to sources of water supply and works for the disposition of sewage, are satisfactory to said department and such board. The board of health of a city or town may adopt, and from time to time alter or amend, rules and regulations to enforce this section in such city or town.

Section 32B1/2. (a) The board of health of any city or town, in each instance after a hearing, reasonable notice of which shall have been published once in a newspaper published in such city or town, may grant, and may suspend or revoke, licenses for manufactured housing communities located within such city or town, which license, unless previously suspended or revoked, shall expire on December thirty-first in the year of issue, but may be renewed annually upon application without such notice and hearing.

(b) All applications, including renewal applications, for manufactured housing communities submitted to the board of health of any city or town, shall include:

(i) a true and complete copy of the rules and regulations then in effect and approved by the attorney general for the manufactured housing community to be licensed;

(ii) a certification from the attorney general that said rules and regulations have been approved pursuant to paragraph (5) of section thirty-two L;

(iii) an acknowledgement signed by the applicant that said applicant is aware of the dispute resolution program created under section thirty-two;

(iv) for manufactured housing communities that employ an on-site sewage disposal system or series of systems with a total design flow of less than 10,000 gallons per day instead of being connected to a municipal sanitary sewer system, a written certification from a system inspector approved by the department of environmental protection pursuant to 310 C.M.R. 15.340 that the on-site sewage disposal system or series of systems has been inspected in accordance with and is in compliance with the requirements of 310 C.M.R. 15.302 and 15.303 within the previous five years; provided, however, that if the system inspector certifies to the local board of health that the on-site sewage disposal system or series of systems has been pumped out at least once every three years since the prior certification by a septage hauler licensed pursuant to 310 C.M.R. 15.500, the written certification of compliance required hereunder need only demonstrate that the on-site sewage disposal system or series of systems has been inspected in accordance with and is in compliance with the requirements of 310 C.M.R. 15.302 and 15.303 within the previous seven years; and provided further, that if no such inspection that complies with the requirements of 310 C.M.R. 15.302 and 15.303 has occurred within the previous five years, or the previous seven years if the system has been pumped out by a septage hauler at least once every three years since the prior certification, no license or license

renewal shall be issued unless and until such inspection is conducted and said certification of compliance with the requirements of 310 C.M.R. 15.302 and 15.303 has been submitted to the board of health. The applicant shall submit to the board of health along with the required certification a completed department of environmental protection Title 5 inspection form;

(v) for manufactured housing communities that employ an on-site sewage disposal system or series of systems with a total design flow of 10,000 to 15,000 gallons per day instead of being connected to a municipal sanitary sewer system, and are large systems as defined by 310 CMR 15.304, and are otherwise not required to obtain a groundwater discharge permit and a privately owned wastewater treatment facility or treatment works pursuant to 310 C.M.R. 15.304 or any other applicable provision of Massachusetts law, a written certification from a system inspector approved by the department of environmental protection pursuant to 310 C.M.R. 15.340 that the on-site sewage disposal system or series of systems has been inspected in accordance with and is in compliance with the requirements of 310 C.M.R. 15.302, 15.303, and 15.304 within the previous five years; and provided, however, that if no such inspection that complies with the requirements of 310 C.M.R. 15.302, 15.303, and 15.304 has occurred within the previous five years, no application or renewal shall be issued unless and until such inspection is conducted and said certification of compliance with the requirements of 310 C.M.R. 15.302, 15.303, and 15.304 has been submitted to the board of health. The applicant shall submit to the board of health along with the required certification a completed department of environmental protection Title 5 inspection form;

(vi) for manufactured housing communities that employ an on-site sewage disposal system and which require a groundwater discharge permit and a privately owned wastewater treatment facility or treatment works pursuant to 314 C.M.R. 5.00 et seq., a written certification

from a wastewater treatment plant operator approved pursuant to 257 C.M.R. 2.00 et seq. that the privately owned wastewater treatment facility or treatment works has been inspected, operated and maintained in accordance with the requirements of 314 C.M.R. 5.00 et seq. and the facilities Groundwater Discharge Permit;

(vii) if a public water system as defined by 310 C.M.R. 22.02, a statement from a Department of Environmental Protection approved primary certified operator who has received a certificate of competency issued by the Board of Certification of Operators of Drinking Water Supply Facilities in accordance with 236 C.M.R. 2.00 through 5.00, and currently maintains a valid license, that the public water system is in compliance with the requirements of 310 C.M.R. 22.00 et seq., or if a consecutive public water system as defined in 310 C.M.R. 22.02 but not subjected to the requirements of 310 C.M.R. 22.00 as excepted under 310 C.M.R. 22.03(3), a statement from a certified operator who has received a certificate of competency issued by the Board of Certification of Operators of Drinking Water Supply Facilities in accordance with 236 C.M.R. through 5.00 and currently maintains a valid license, that the consecutive public water system is in compliance with the requirements of 310 C.M.R. 22.00 et seq. An applicant may present a statement from the certified operator that is not more than one year old when first required to include said statement with the application for license pursuant to this section; and ; and

(viii) for manufactured housing communities that are connected to a municipal sanitary sewer system, a written certification from a Massachusetts registered professional engineer with background in civil, sanitary and environmental engineering and experience in the installation, operation and maintenance of sewage collection systems that the sewage collection system at the

premises has been inspected within the previous two years and is in compliance with all applicable federal, state and local statutes, regulations and bylaws. For the purposes of this paragraph, an inspection need not include an evaluation of infiltration and inflow, unless there is observable sanitary sewer overflow or other reasonable evidence that infiltration or inflow exists..

(c) If a manufactured housing community is unable to provide certification to a board of health pursuant to paragraphs (iv) through (viii) of subsection (b) due to substandard, degraded, or otherwise non-functional water, sewage disposal, or sewer infrastructure and facilities, the board of health may, at its discretion, issue a conditional license for a term of up to one year if it reasonably determines that (i) the lack of compliance with said paragraphs presents no immediate threat to the health, safety, or welfare of the manufactured housing community residents, and (ii) the applicant has taken or plans to take substantial steps to make repairs and improvements to bring the system or systems into compliance to meet the certification requirements enumerated in said paragraphs during the conditional licensure period, provided that the manufactured housing community owner presents to the board of health a work plan and satisfactory proof of a financing plan for the necessary repairs and improvements. A board of health may, at its discretion, at the conclusion of the one year conditional licensure period, extend the conditional license for a term of up to one additional year, provided that a board of health may not issue a conditional license for a total of more than two years. The board of health may rescind any conditional license if it determines that the operator of the community has not complied in full with the terms of its work and financing plans. Nothing in this subsection shall be construed as requiring a board of health to issue a conditional license.

(d) Unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, the fee for each original or renewal license for a manufactured housing community shall be ten dollars for each lot in the community, whether occupied or vacant, of which eighty percent shall be deposited into the Manufactured Housing Fund established in section 2CCCC of chapter twenty-nine, and twenty percent of the licensing fees shall be deposited into the general fund of the municipality pursuant to section fifty three of chapter forty four. Such board of health shall at once notify the department of environmental protection of the granting or renewal of such a license for a manufactured housing community, and said department shall have jurisdiction to inspect the premises so licensed to determine that the sources of public water supply and the works for the disposition of the sewage of such premises are sanitary and in compliance with all applicable state statutes and department regulations. If upon inspection of any manufactured housing community the department finds the sources of public water supply to be polluted or otherwise not in compliance with all applicable state statutes and regulations, or finds the works for the disposition of the sewage to be unsanitary or otherwise not in compliance with all applicable state statutes and regulations, or finds both systems are not in compliance with said statutes and regulations, said department shall forthwith notify such board of health and such licensee to that effect by registered mail and said board of health shall forthwith prohibit the use of any public water supply found by said department to be polluted. Unless such licensee shall, within thirty days following the giving of such notice, correct the conditions at such premises to the satisfaction of both said department and such board of health, the license so granted shall be suspended or revoked by such board of health. Any license so suspended or revoked may be reinstated by such board of health when the

conditions at such premises, as to sources of public water supply and works for the disposition of sewage, are satisfactory to said department and such board of health. The board of health of a city or town may adopt, and from time to time alter or amend, rules and regulations to enforce this section in such city or town.

(e) No licensing or inspection fees incurred under this section shall be passed on, directly or indirectly, through a rent increase or otherwise, to any tenant, resident or occupant of the community. Any improvements or repairs that address substandard, degraded, or otherwise non-functional water or sewer infrastructure and facilities discovered or observed during inspections conducted pursuant to paragraphs (iv) through (viii) of subsection (b) shall not be construed as licensing or inspection fees, and may be passed onto residents as capital improvement costs where the applicable provisions of 940 C.M.R. 10.00 et seq. pertaining to said costs are otherwise met.

SECTION 5. Said chapter 140 of the General Laws, as so appearing, is hereby amended by striking out section 32C and inserting in place thereof the following section:-

Section 32C. Every board of health shall, from time to time, examine all camps, motels, and cabins licensed by it under authority of sections thirty-two B and manufactured housing communities licensed under thirty-two B1/2, and if, upon such examination, such camp, motel, cabin or manufactured housing community is found to be in an unsanitary condition, said board of health may, after notice and a hearing, suspend or revoke such license.

SECTION 6. Said chapter 140 of the General Laws, as so appearing, is hereby amended by striking out section 32D and inserting in place thereof the following section:-

Section 32D. Whoever conducts, controls, manages or operates any camp, motel, or cabin licensed under section thirty-two B or a manufactured housing community licensed under section thirty-two B1/2 shall post, in a conspicuous place near the entrance to every such camp, motel, cabin or manufactured housing community or in a conspicuous place at the office of the manager on the site, a copy of the rules and regulations adopted thereunder, as most recently altered or amended.

SECTION 7. Section 32E of said chapter 140, as so appearing, is hereby amended, by striking out the words “section thirty-two B”, in line 7, and inserting in place thereof the following words:- section thirty-two B1/2.

SECTION 8. Sections 32F, 32G and 32H of said chapter 140, as so appearing, are hereby amended by striking out the words “section thirty-two B”, each time it appears, and inserting in place thereof, in each instance, the following words:- section thirty-two B1/2.

SECTION 9. Section 32L of said chapter 140, as so appearing, is hereby amended by striking out the second sentence in paragraph (3) and inserting in place thereof the following sentence:- A manufactured housing community owner shall not impose any conditions of rental or occupancy which restrict the resident in his choice of a seller of fuel, furnishings, goods, services or accessories connected with the rental or occupancy of a manufactured home lot, provided, however, that such seller is in compliance with applicable law and rules and regulations of the manufactured housing community approved by the attorney general or otherwise then in effect pursuant to paragraph (5) of section thirty-two L of chapter one hundred and forty, including rules imposing reasonable insurance requirements.

SECTION 10. Said section 32L of said chapter 140, as so appearing, is hereby further amended by striking out paragraph (5) and inserting in place thereof the following paragraph:-

(5) If any manufactured housing community owner promulgates, adds, deletes or amends any rule governing the rental or occupancy of a manufactured home site in a manufactured housing community, a new copy of all such rules shall be sent by certified mail, return receipt requested, to the attorney general and the director of housing and community development at least ninety days prior to the proposed effective date of such promulgation, addition, deletion or amendment. The director shall have forty-five days to review the rules for compliance with applicable housing law. Upon completing said review, the director shall forward his conclusion to the attorney general, who shall have the remainder of said ninety day period to approve or disapprove the rules, unless the attorney general determines that an extension of the rules review period is warranted. If the attorney general makes such a determination, the attorney general shall send written notification of such extension to the owner of the manufactured housing community, and such extension shall not exceed ninety days. A copy of such rules shall be furnished to each manufactured housing community resident in such community along with a copy of the certified mail receipts signed by a representative of the attorney general. Such copies shall be furnished by the manufactured housing community licensee to said residents at least sixty days prior to the proposed effective date of such promulgations, addition, deletion or amendment. If the attorney general does not take action prior to the expiration of the ninety day period or the expiration of any extension of the rules review period, such rules shall be deemed approved. Nothing in this section shall preclude a private party from challenging such rules or portions thereof in a court of competent jurisdiction prior to or after such disapproval.

SECTION 11. Said section 32L of said chapter 140, as so appearing, is hereby further amended by striking out, in paragraph (7), the words “thirty-two S” and inserting in place thereof the following:- thirty-two T.

SECTION 12. Said section 32L of said chapter 140, as so appearing, is hereby further amended in paragraph (7A), by striking out the words “director of housing and community development or the director’s designee”, in line 96, and inserting in place thereof the following:- the manufactured housing commission.

SECTION 13. Section 32P of said chapter 140, as so appearing, is hereby amended by striking out lines 21 through 34 and inserting in place thereof the following:-

The rules set forth below govern the terms of your lease or occupancy with this manufactured housing community. If these rules are changed in any way, the addition, deletion or amendment must be delivered to you, along with a copy of the certified mail receipts indicating that such change has been submitted to the attorney general and the director of housing and community development and a copy of the approvals thereof by the attorney general or a certificate signed by the owner stating that the attorney general has not taken any action with respect thereto within the period set forth in paragraph (5) of section thirty-two L of chapter one hundred and forty . This notification must be furnished to you at least sixty days before the change goes into effect. The law requires all of these rules and regulations to be fair and reasonable or said rules and regulations cannot be enforced.

SECTION 14. Section 32R of said chapter 140, as so appearing, is hereby amended in paragraph (c) by striking out the words “at least fifty-one percent” each time it appears, and inserting in place thereof, in each instance, the following words:- more than fifty percent.

SECTION 15. Section 32S of said chapter 140, as so appearing, is hereby amended by striking out the words “thirty-two S”, in line 4, and inserting in place thereof the following:-
thirty-two T.

SECTION 16. Said Chapter 140, as so appearing, is hereby further amended by adding after section 32S the following new section:-

Section 32T. (a) There shall be a manufactured housing dispute resolution program to assist the manufactured housing community with resolving disputes. A resident, owner or operator of a manufactured housing community may file a complaint with the attorney general alleging a violation of sections 32A to 32S, inclusive, of chapter 140, regulations promulgated by the attorney general pursuant to said sections, or community rules approved pursuant to paragraph (5) of section thirty-two L of said chapter 140. All complaints filed under this section shall be in writing and include an acknowledgement signed by the party making the complaint that said party is aware of the dispute resolution program created under this section.

(b) The attorney general shall review all complaints filed under this section, and may take action upon them or refer them to the manufactured housing commission for resolution.

(c) Upon receipt of a complaint from the attorney general, the commission shall assign one of its members to conduct a mediation between the parties involved in the dispute, provided however that commissioners or alternate commissioners appointed under section 108 of chapter 6 as residents or owners of a manufactured housing community shall not serve as mediators. The mediator may gather information he deems necessary to determine whether a violation has occurred. After reviewing information from the parties involved in the dispute, the mediator shall then provide recommendations for the resolution of the dispute. If the parties accept the

mediator's proposal, or subsequently negotiate a settlement, the mediator shall notify both parties in writing of the terms agreed to by the parties involved in the dispute. If the parties fail to agree to a resolution of the dispute during the mediation process, one or both parties may request that the commission hear and issue a decision on the dispute under the process described in paragraph (d) of this section. Said request shall be made in writing within thirty days of the close of the mediation. All requests for a hearing shall include a fee of twenty-five dollars paid by the party requesting a hearing, subject to adjustment pursuant to section 3B of chapter 7, which the commission shall deposit into the manufactured housing fund established in section 2CCCC of chapter 29.

(d) A hearing as described in subsection (c) shall be conducted by three members of the commission; one of whom shall be the member who is the resident of a manufactured housing community; and one of whom shall be the member who is the owner of a manufactured housing community. Commission members appointed by the governor pursuant to section 108 of chapter 6 as either owners or residents, and that own or reside in the manufactured housing community that is the subject of the complaint, shall be prohibited from participating in hearings involving that manufactured housing community. When a commission member is so excluded from hearing a complaint, the corresponding alternate-member of the commission shall replace the affected member and hear the complaint. The third member who hears the complaint shall not be the member who conducted the mediation of the complaint, and shall be chosen on an alternating basis from the two remaining commission members who are eligible to hear the complaint. Within forty-five days after the hearing, the commission shall issue a written decision as to whether a violation has occurred, and shall order appropriate action, if any, to be taken by the owner, resident, operator, and/or any of the parties.

(e) No costs incurred under section 32T, including but not limited to costs to file or defend a complaint, or monies a party is ordered to pay, shall be passed on, directly or indirectly, through a rent increase or otherwise, to any tenant, resident or occupant of the community.

(f) All commission hearings and judicial review of commission decisions under this section shall be conducted pursuant to chapter thirty A.

(g) The attorney general, on request of the commission or his own initiative, or any party to the commission hearing, may bring an action in a court of competent jurisdiction to enforce a decision issued by the commission under paragraph (d) of this section.

(h) The commission shall develop written rules and procedures to carry out its duties under this section.

SECTION 17. Section 32Q of chapter 140 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out in lines 2-4 the following: words “, built in conformance to the National Manufactured Home Construction and Safety Standards”.