SENATE DOCKET, NO. 1679 FILED ON: 1/16/2025

SENATE . . . . . No. 1428

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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 historic districts and commissions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Joanne M. Comerford	*Hampshire, Franklin and Worcester*

SENATE DOCKET, NO. 1679 FILED ON: 1/16/2025

SENATE . . . . . No. 1428

By Ms. Comerford, a petition (accompanied by bill, Senate, No. 1428) of Joanne M. Comerford for legislation to establish and preserve historic districts and commissions. Municipalities and Regional Government.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act relative to historic districts and commissions.

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

SECTION 1. Chapter 40, Section 8D of the General Laws as appearing in the 2022 Official Edition is hereby amended by striking out the first sentence in its entirety and inserting in place thereof the following paragraph:-

"Section 8D. (a) A city or town which accepts this section may establish an historical commission, hereinafter called the commission. The purposes of the commission shall include promoting the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings, places, or other historical or archeological assets of such city or town or the commonwealth or their architecture, which are significant in the history of such city or town or the commonwealth."

SECTION 2. Chapter 40, Section 8D of the General Laws is hereby amended by inserting after the first sentence the following paragraph:-

"The further purpose of this section is to establish a uniform process for reviewing requests to demolish or relocate significant buildings in order to: (i) establish an appropriate waiting period during which the city or town and the applicant can propose and consider alternatives to the demolition or relocation of a building of historical, architectural, cultural or urban design value to the city or town or the commonwealth; and (ii) provide an opportunity for the public to comment on the issues regarding the demolition or relocation of a particular building. This section further seeks to document significant buildings that cannot be preserved, through photographic, video and/or written materials of the entire building, or part thereof as designated by the commission, and to preserve those materials as part of the public record."

SECTION 3. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by forming the existing second through fifth sentences into a separate paragraph to appear after the paragraph inserted per SECTION 2 above.

SECTION 4. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by striking out, in line 20, the words "a local" and inserting in place thereof "an".

SECTION 5. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by striking out the sixth through eighth sentences in their entirety and inserting in place thereof the following as a new paragraph:-

"The commission may hold public hearings, may enter into contracts with individuals, organizations and institutions for services furthering the commission's purposes; may enter into contracts with local or regional associations for cooperative endeavors furthering the commission's purposes; may accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state or other governmental bodies to further the commission's

purposes; may make and sign any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint such clerks and other employees as it may from time to time require."

SECTION 6. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by forming the existing ninth through twelfth sentences into a separate paragraph to appear after the paragraph inserted per SECTION 5 above.

SECTION 7. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by adding, in line 41 and line 46, the words "or select board" after "board of selectmen".

SECTION 8. Chapter 40, Section 8D of the General Laws, as so appearing, is hereby amended by forming the existing thirteenth through sixteenth sentences into a separate paragraph to appear after the paragraph formed per SECTION 6 above.

SECTION 9. Chapter 40, Section 8D of the General Laws is hereby amended by inserting at the end of the section the following paragraphs:-

"Meetings of a commission shall be held at the call of the chairperson and shall be called at the request of two members of the commission and in such other manner as the commission shall determine in its rules. A majority of the members of a commission shall constitute a quorum. The concurring vote of a majority of the members of the commission shall be necessary to rule on any application requiring a public hearing.

Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf.

The commission shall keep a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city or town clerk.

The commission shall file with the city or town clerk and with any department of the city or town having authority to issue building permits a copy or notice of all determinations issued by it with respect to applications to demolish or relocate a building.

The commission shall have, in addition to the powers, authority and duties granted to it by this section, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the city council or town meeting.

(b) Definitions. As used in this section (1) the word “applicant” means any person or entity that is the record owner of property or properties on which a building that is in whole or in part at least 50 years old sits and who files an application for a demolition permit or for authorization to relocate a building; (2) the word "building" means a combination of materials forming a shelter for persons, animals or property; (3) the word "commission" means the commission acting as the historical commission; (4) the word “demolition” means any act of pulling down, destroying, removing, dismantling or razing a building, in whole or in part, or

commencing the work of total or substantial destruction of a building with the intent of completing the same; (5) the words "person aggrieved" mean the applicant, an owner of adjoining property, an owner of property within one hundred feet of the subject parcel's property lines, and any not-for-profit corporation of which one of its purposes is the preservation of historic buildings; (6) the words "preferably preserved" mean a determination by the historical commission, following a public hearing, that a building is significant and requires a preservation period in which to explore options to preserve, rehabilitate or restore the building; (7) the words "preservation period" mean a specified period of time uniformly applied by the city or town of at least 12 months and not to exceed 24 months from the date of the close of the public hearing, following a determination by the historical commission that a significant building should be preferably preserved, during which no demolition permit or authorization to relocate may be issued for the building, unless the historical commission later determines otherwise; (8) the word "relocate" means to move a building, in whole or in part, from its foundation to any other location; (9) the word "significant" in relation to a building means the building is in whole or in part at least 50 years old and has been determined by the commission to be significant based on any of the following criteria: (i) the building is listed on, or is within an area listed on, the National Register of Historic Places, (ii) the building has been found eligible for listing on the National Register of Historic Places, (iii) the building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the city or town in which it is located or the commonwealth, or (iv) the building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings; and (10) the words "solar energy system" shall mean a device or

structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation or water heating.

(c) Building and Demolition Permits Restricted. No demolition permit or authorization for relocation of a building that is in whole or in part at least 50 years old shall be issued by a city or town where the building is located, or by any department thereof, without following the provisions of this section. If a building is of undetermined age, it shall be assumed that the building is over 50 years old for the purposes of this section. No permit or authorization for such building to be demolished or relocated shall be issued until (1) the applicant files an application for a demolition permit with the inspector of buildings or building commissioner, (2) the applicant also files an application for demolition or relocation with the commission in the form of and containing content specified by the city or town and its commission, (3) the commission holds a public hearing and makes a finding as to whether the building is significant and should be preferably preserved, and (4) if the commission determines that preferable preservation is appropriate, (i) the preservation period has run and expired or (ii) the applicant has satisfied the commission's concerns such that the commission determines to end the preservation period early, subject to any conditions imposed in connection with such preferable preservation.

Nothing in this section shall restrict the authority of an inspector of buildings or building commissioner to order a building owner or the city or town to demolish a building if the inspector of buildings or building commissioner determines that the condition of a building or part thereof presents an imminent and substantial danger to the public health or safety. Further, nothing in this section shall restrict the authority of the inspector of buildings or building commissioner to require the applicant to take reasonable action to prevent the need for required

demolition of a significant building, which action may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public.

(d) Hearing Procedure. Within 30 days of the receipt of an application by the commission for demolition or relocation of a building, the commission shall hold a public hearing. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in the city hall or town hall for a period of not less than 14 days prior to the date of said hearing, and the applicant and the building commissioner shall be notified in writing of the meeting time and place. To the extent a city or town maintains a municipal online meeting calendar, the notice shall also be placed on such online meeting calendar 14 days prior to the hearing. A copy of the notice shall be mailed to the applicant and to all abutters and abutters to abutters, including those across the street of the lot on which the building is located.

Within 21 days following the close of the public hearing, the commission shall decide whether the building is a significant building and, if so, whether it should be preferably preserved. If agreed to in writing by the applicant, the determinations of the commission may be postponed to a subsequent meeting.

Upon a determination by the commission that the building is not a significant building, the commission shall so notify the inspector of buildings or building commissioner and the applicant in writing within 21 days of the close of the public hearing. The inspector of buildings or building commissioner may then issue the demolition permit in his or her discretion.

Upon a determination by the commission that the building is a significant building, the commission shall determine whether the building should be preferably preserved.

If the commission determines that the building is not preferably preserved, the commission shall so notify the inspector of buildings or building commissioner and applicant in writing within 21 days of the close of the public hearing. The inspector of buildings or building commissioner may then issue the demolition permit in its discretion.

If the commission determines that the building is preferably preserved, the commission shall notify the inspector of buildings or building commissioner and applicant in writing within 21 days of the close of the public hearing. Following such notification, no demolition permit or authorization to relocate may then be issued for a period to be determined by the commission, such period to be uniformly applied by the city or town to all buildings determined by the commission to be preferably preserved, of no less than 12 months from the date of the close of the public hearing nor more than 24 months from the date of the close of the public hearing. If the applicant subsequently satisfies the commission's concerns such that the commission determines to end the preservation period early, subject to any conditions imposed in connection with such preferable preservation, the commission will provide notice to the inspector of buildings or building commissioner and applicant of such determination in writing.

Upon determination by the commission that any building which is the subject of an application is a preferably preserved building, no building permit for new construction or alterations on the premises shall be issued for a period of the applicable 12 to 24 months from the date of the close of the public hearing unless otherwise agreed to by the commission.

(e) Factors to be considered by the commission in ruling on an application for demolition or relocation. When ruling on an application for demolition or relocation of a building, after having determined that the building is significant and as part of determining whether the building

should be preferably preserved, the commission must find that, in the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished or relocated. In making such finding, the commission shall consider the building's historic and architectural design significance and its contribution to the character of the city or town.

Notwithstanding any general or special law to the contrary, the commission shall give substantial weight to the threat posed by climate change and to the commonwealth's obligation to meet statewide greenhouse gas emission limits and sublimits established under chapter 21N when ruling on applications for demolition or relocation that involve existing solar energy systems.

(f) Commission authority to employ outside consultants during review process. Notwithstanding G.L. c. 44, § 53, upon receipt of an application for demolition or relocation or at any point during any hearing process, the commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the commission for expert engineering and other consultant services deemed necessary by the commission to come to a final decision on the application. The consultant fee is specific to historical commissions. This section provides authority to cities and towns in addition to and consistent with that granted under G.L. c. 44, § 53G.

The specific consultant services may include, but are not limited to surveying the existing historic resource, reviewing proposed changes for consistency with the commission's rules and regulations, addressing other design or construction-related issues the commission determines are relevant, and advising on historic preservation or land use law and legal issues. The commission may require the payment of the consultant fee at any point in its deliberations prior

to a final decision. Failure by the applicant to pay the consultant fee specified by the commission within the timeframe set by the commission shall be cause for the commission to deny issuance of a permit or other requested action. The applicant shall pay the consultant fee to be put into a special account, which may be drawn upon by the commission for specific consultant services approved by the commission at one or more of its public meetings. The consultant shall be chosen by, and report only to, the commission or its designee. The exercise of discretion by the commission in making its determination to require payment of a consultant fee shall be based upon its finding that additional information reasonably acquirable only through outside consultants is necessary for the making of an objective decision.

The city or town shall provide rules for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen or select board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or 3 or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen or select board within one month following the filing of the appeal, the selection made by the commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such special account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the commission without further appropriation; provided, however, that such funds are to be

expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including accrued interest, if any, at the completion of said project shall be repaid to the applicant or to the applicant's successor-in-interest, and a final report of said account shall be made available to the applicant or to the applicant's successor-in-interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the city or town for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

(g) Mandatory Pre-Demolition or Pre-Relocation Documentation. In instances where the commission, after public hearing, determines that demolition or relocation of a building is appropriate or acceptable, or, in the alternative, the commission determines that a building should be preferably preserved but the preservation period expires, the applicant at its expense and as a condition of obtaining a permit from the commission, shall provide to the commission for its approval a comprehensive historic resource documentation package that fully conveys, in text, maps, architectural plans, photographs and other appropriate and available media, the significant features, context and history of the historic building, or part thereof as designated by the commission, prior to its demolition or relocation.

(h) Review procedure provided by local ordinance or by-law. A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any person aggrieved by a determination of the commission related to demolition or relocation of a building may, within 20 days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which

the city or town is a member. If the city or town is not a member of a regional planning agency, the Executive Office of Housing and Livable Communities shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within 45 days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section 8D(i).

(i) Appeal to superior court. Any person aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section 8D(h) are included in a local ordinance or by-law, may, within 20 days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission only if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

(j) Jurisdiction of superior court; penalty. The superior court sitting in equity for the county in which the city or town is situated shall have jurisdiction to enforce the provisions of this section and any ordinance or by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of selectmen or select board or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the restoration of any building demolished or relocated in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this section, including failing to comply with an enforcement order under section 8D(l) below, shall be punished by a fine of up to $5,000 per day, and in the case of demolition or relocation of any building in contravention of a commission final decision or without seeking commission approval where required, up to $25,000 per day. Each day during any portion of which a violation continues to exist shall constitute a separate offense. The foregoing penalty authority is specific to historical commissions and provides authority to cities and towns in addition to and not in derogation of rights already granted to cities and towns under G.L. c. 40, § 21D.

(k) Moratorium following illegal demolition or relocation. In addition to monetary penalties assessed and/or an order of the superior court ordering the restoration of any building demolished or relocated under section 8D(j) above, the demolition or relocation of a building in violation of this section, whether by failing to seek and obtain advance required approval from the commission or by demolishing or relocating in contravention of a commission final decision, shall result in an automatic stay in issuance of a building permit for any construction at such property or properties where the building was located for no less than 5 years nor more than 10 years from the date the commission receives actual notice of the violative work. The automatic

stay period shall be established in advance by the city or town, shall be for a fixed period of time between 5 years and 10 years, and shall be uniformly applied and be applicable to all demolition and relocation conducted in contravention of a commission final decision. The city or town shall be entitled to file a notice of such moratorium against the applicable property at the appropriate registry of deeds.

(l) Commission enforcement order authority. When the commission determines that an activity is in violation of this section, a permit issued by the commission, or a municipal law, ordinance, bylaw, rule or regulation enacted by the city or town in furtherance of this section and implemented by the commission, the commission and any officer with police powers may issue an enforcement order, directing the property owner of the building, its agents, permittees and all others to immediately cease and desist the violative activity, comply with such requirement and take other actions deemed necessary to remedy such violations. In the case of unpermitted demolition or relocation of a building that is subject to this section, the commission may further order that the building be restored to its condition prior to the demolition or relocation. An enforcement order issued by the commission shall be signed by a majority of the commission. In a situation requiring immediate action, an enforcement order may be signed by a single member or agent of the commission, if said enforcement order is ratified by a majority of the members at the next scheduled meeting of the commission. The commission, its members and agents, any officer with police powers, and employees of the Massachusetts Historical Commission may enter upon privately owned property for the purpose of performing their duties under this section, subject to constitutional limitations."

SECTION 10. Chapter 40C of the General Laws as appearing in the 2022 Official Edition, Section 2 thereof, is hereby amended by striking out the section title “Purpose” and inserting in place thereof “Purposes”.

SECTION 11. Section 2 of said chapter 40C, as so appearing, is hereby amended by adding the following at the end of the section: “This chapter seeks to accomplish the foregoing purpose by establishing a uniform process for establishing historic districts within a city or town and for historic district commissions to review and rule on applications to alter buildings located within any such districts. The further purpose of this chapter is to establish a uniform process for reviewing requests to demolish or relocate significant buildings in order to: (i) establish an appropriate waiting period during which the city or town and the applicant can propose and consider alternatives to the demolition or relocation of a building of historical, architectural, or cultural value or which contributes to the character of the historic district within the city or town; and (ii) provide an opportunity for the public to comment on the issues regarding the demolition or relocation of a particular building. This section further seeks to document significant buildings that cannot be preserved, through photographic, video and/or written materials of the entire building and to preserve those materials as part of the public record.”

SECTION 12. Section 4 of said chapter 40C, first paragraph thereof, as so appearing, is hereby amended by striking out, starting in line 9, the words “the Society for the Preservation of New England Antiquities” and inserting in place thereof “Historic New England”.

SECTION 13. Section 5 of said chapter 40C, as so appearing, is hereby amended by striking out the section in its entirety and inserting in place thereof the following section:-

“Chapter 40C: Section 5. Definitions.

Section 5. As used in this chapter (i) the word "altered" includes the words "rebuilt", "reconstructed", “relocated”, "restored" and "demolished" and the phrase "changed in exterior color"; (ii) the word “applicant” means any person or entity that files an application for a certificate of appropriateness, a certificate of non-applicability, a certificate of hardship or an application for a demolition permit; (iii) the word "building" means a combination of materials forming a shelter for persons, animals or property; (iv) the word "commission" means the commission acting as the historic district commission; (v) the word "constructed" includes the words "built", "erected", "installed", "enlarged", and "moved"; (vi) the word “demolition” means any act of pulling down, destroying, removing, dismantling or razing a building, in whole or in part, or commencing the work of total or substantial destruction with the intent of completing the same; (vii) the words "exterior architectural feature" means such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures; (viii) the words "person aggrieved" mean the applicant, an owner of adjoining property, an owner of property within the same historic district as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts; (ix) the words “preferably preserved” mean a determination by the historic district commission, following a public hearing, that a building is significant and requires a preservation period in which to explore options to preserve, rehabilitate or restore the building; (x) the words “preservation period” mean a specified period of time uniformly applied by the city or town of at least 12 months and not to

exceed 24 months from the date of the close of the public hearing, following a determination by the historic district commission that a significant building should be preferably preserved, during which no demolition permit or authorization to relocate may be issued for the building, unless the historic district commission later determines otherwise; (xi) the word “relocate” means to move a building, in whole or in part, from its foundation to any other location; (xii) the word “significant” in relation to a building means the building is in whole or in part at least 50 years old and has been determined by the commission to be significant based on any of the following criteria: (a) the building is listed on, or is within an area listed on, the National Register of Historic Places, (b) the building has been found eligible for listing on the National Register of Historic Places, (c) the building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the city or town in which it is located or the commonwealth, or (d) the building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings; (xiii) the words “solar energy system” shall mean a device or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation or water heating; and (xiv) the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.”

SECTION 14. Section 6 of said Chapter 40C, second paragraph thereof, as so appearing, is hereby amended by striking out, in line 14, the words “or removal”.

SECTION 15. Section 6 of said Chapter 40C, third paragraph thereof, as so appearing, is hereby amended by striking out the paragraph in its entirety and inserting in place thereof the following paragraph:-

"No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission. Further, no permit for demolition or authorization for relocation of a building within an historic district shall be issued by a city or town or any department thereof until (i) the applicant files an application for a demolition permit with the inspector of buildings or building commissioner, (ii) the applicant also files an application for demolition or relocation with the commission in the form of and containing content specified by the city or town, and its commission, (iii) the commission holds a public hearing and makes a finding as to whether the building is significant and should be preferably preserved, and (iv) if the commission determines that preferable preservation is appropriate, (a) the preservation period has run and expired or (b) the applicant satisfies the commission's concerns such that the commission determines to end the preservation period early, subject to any conditions imposed in connection with such preferable preservation, in which case the commission will provide notice to the inspector of buildings or building commissioner and applicant of such determination in writing."

SECTION 16. Section 6 of said Chapter 40C, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

"Nothing in this chapter shall restrict the authority of an inspector of buildings or building commissioner to order a building owner or the city or town to demolish a building if the

inspector of buildings or building commissioner determines that the condition of a building or part thereof presents an imminent and substantial danger to the public health or safety. Further, nothing in this chapter shall restrict the authority of the inspector of buildings or building commissioner to require the applicant to take reasonable action to prevent the need for required demolition of a significant building, which action may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public."

SECTION 17. Chapter 40C of the General Laws is hereby amended by inserting after section 6 the following section:-

"Chapter 40C: Section 6A. Commission authority to employ outside consultants during review process.

Section 6A. Notwithstanding G.L. c. 44, § 53, upon receipt of an application for a certificate of appropriateness, a certificate of non-applicability a certificate of hardship, or an application for demolition or relocation or at any point during a hearing process, the commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the commission for expert engineering and other consultant services deemed necessary by the commission to come to a final decision on the application. The consultant fee is specific to historic district commissions. This section provides authority to cities and towns in addition to and consistent with that granted under G.L. c. 44, § 53G.

The specific consultant services may include, but are not limited to surveying the existing historic resource, reviewing proposed changes for consistency with the commission's rules and regulations, addressing other design or construction-related issues the commission determines are relevant, and advising on historic preservation or land use law and legal issues. The

commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. Failure by the applicant to pay the consultant fee specified by the commission within the timeframe set by the commission shall be cause for the commission to deny issuance of a permit or other requested action. The applicant shall pay the consultant fee to be put into a special account, which may be drawn upon by the commission for specific consultant services approved by the commission at one or more of its public meetings. The consultant shall be chosen by, and report only to, the commission or its designee. The exercise of discretion by the commission in making its determination to require payment of a consultant fee shall be based upon its finding that additional information reasonably acquirable only through outside consultants is necessary for the making of an objective decision.

The city or town shall provide rules for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen or select board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or 3 or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen or select board within 1 month following the filing of the appeal, the selection made by the commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such special account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction

of the commission without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including accrued interest, if any, at the completion of said project shall be repaid to the applicant or to the applicant's successor-in-interest, and a final report of said account shall be made available to the applicant or to the applicant's successor-in-interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the city or town for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts."

SECTION 18. Section 7 of said Chapter 40C, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

"When ruling on an application for demolition or relocation of a building, after having determined that a building is significant and as part of determining whether the building should be preferably preserved, the commission must find that, in the public interest, it is preferable that the building be preserved or rehabilitated rather than demolished or relocated. In making such finding, the commission shall consider at a minimum the building's historic and architectural design significance and its contribution to the character of the historic district."

SECTION 19. Section 11 of said Chapter 40C, second paragraph thereof, as so appearing, is hereby amended by inserting after the first sentence, in line 14, the following sentence: "The foregoing determination requirement and time period shall not apply to applications for demolition or relocation of a building."

SECTION 20. Chapter 40C of the General Laws is hereby amended by inserting after section 11 the following section:-

"Chapter 40C: Section 11A. Mandatory Pre-Demolition or Pre-Relocation Documentation.

In instances where the commission, after public hearing, determines that partial or total demolition or relocation of a building, structure or site is appropriate or acceptable, or, in the alternative, the commission determines that a building should be preferably preserved but the preservation period expires, the applicant at its expense and as a condition of obtaining a permit from the commission, shall provide to the commission for its approval a comprehensive historic resource documentation package that fully conveys, in text, maps, architectural plans, photographs and other appropriate and available media, the significant features, context and history of the historic building, structure or site, or part thereof as designated by the historic commission, prior to its demolition or relocation."

SECTION 21. Section 12 of said chapter 40C, first paragraph thereof, as so appearing, is hereby amended by striking out, in line 9, the words "department of community affairs" and inserting in place thereof "Executive Office of Housing and Livable Communities".

SECTION 22. Section 12A of said Chapter 40C, second sentence thereof, as so appearing, is hereby amended by adding, in line 8, the word "only" after the words "annul the determination of the commission".

SECTION 23. Section 13 of said Chapter 40C, first paragraph thereof, as so appearing, is hereby amended by adding, in line 6, the words "or select board" after "board of selectmen".

SECTION 24. Section 13 of said Chapter 40C, first paragraph thereof, as so appearing, is hereby amended by striking out, starting in line 7, the word “removal” and inserting in place thereof the word “demolition”.

SECTION 25. Section 13 of said Chapter 40C, second paragraph thereof, as so appearing, is hereby amended by striking out the paragraph in its entirety and inserting in place thereof the following paragraph:-

“Whoever violates any of the provisions of this chapter, including failing to comply with an enforcement order under section 13B, shall be punished by a fine of up to $5,000 per day, and in the case of demolition or relocation of any building, structure or exterior architectural feature in contravention of a commission final decision or without seeking commission approval where required, up to $25,000 per day. Each day during any portion of which a violation continues to exist shall constitute a separate offense. The foregoing penalty authority is specific to historic district commissions and provides authority to cities and towns in addition to and not in derogation of rights already granted to cities and towns under G.L. c. 40, § 21D.”

SECTION 26. Chapter 40C of the General Laws is hereby amended by inserting after section 13 the following sections:-

“Chapter 40C: Section 13A. Moratorium following illegal demolition or relocation.

Section 13A. In addition to monetary penalties assessed and/or an order of the superior court ordering the reconstruction or restoration of a building, structure or site under section thirteen above, the demolition or relocation of a building, structure or site in violation of this chapter, whether by failing to seek and obtain advance required approval from the commission or by demolishing or relocating in contravention of a commission final decision, shall result in an

automatic stay in issuance of a building permit for any construction at such property or properties where the building was located for no less than 5 years nor more than 10 years from the date the commission receives actual notice of the violative work. The automatic stay period shall be established in advance by the city or town, shall be for a fixed period of time between 5 years and 10 years, and shall be uniformly applied and be applicable to all demolition and relocation conducted in contravention of a commission final decision. The city or town shall be entitled to file a notice of such moratorium against the applicable property at the appropriate registry of deeds."

"Chapter 40C: Section 13B. Commission enforcement order authority.

Section 13B. When the commission determines that an activity is in violation of this chapter, a permit issued by the commission, or a municipal law, bylaw, rule or regulation enacted by the city or town in furtherance of this chapter and implemented by the commission, the commission and any officer with police powers may issue an enforcement order, directing the property owner of the building, structure or site, its agents, permittees and all others to immediately cease and desist the violative activity, comply with such requirement and take other actions deemed necessary to remedy such violations. In the case of unpermitted demolition or relocation of a building, structure or site that is subject to this chapter, the commission may further order that the building, structure or site be restored to its condition prior to the demolition or relocation. An enforcement order issued by the commission shall be signed by a majority of the commission. In a situation requiring immediate action, an enforcement order may be signed by a single member or agent of the commission, if said enforcement order is ratified by a majority of the members at the next scheduled meeting of the commission. The commission, its members and agents, any officer with police powers, and employees of the Massachusetts

Historical Commission may enter upon privately owned property for the purpose of performing their duties under this chapter, subject to constitutional limitations."