HOUSE DOCKET, NO. 3274 FILED ON: 1/21/2011

HOUSE . . . . . No. 2788

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Cantwell

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 passage of the accompanying:

An Act to promote local and regional affordable housing planning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James M. Cantwell	*4th Plymouth*

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HOUSE . . . . . No. 2788

By Mr. Cantwell of Marshfield, a petition (accompanied by bill, House, No. 2788) of James M. Cantwell for legislation to promote local and regional affordable housing planning. Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote local and regional affordable housing planning.

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 40B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following at the end of the definition of "consistent with local needs" in section 20:

"For the purpose of determining whether low or moderate income housing exists which is in excess of ten per cent of a municipality's housing units reported in the latest decennial census, a municipality's subsidized housing inventory shall include any such housing that has been allocated pursuant to a housing credit allocation agreement under Section 20(a)."

SECTION 2. Chapter 40B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following definitions to Section 20:

"subsidized housing inventory," a list or tally of a municipality's low or moderate income housing units, whether located within the municipality or within another municipality and subject to a Housing Credit Allocation Agreement pursuant to Section 20A of this Chapter. The Department of Housing and Community Development shall maintain an official subsidized housing inventory for each municipality in the Commonwealth. Any person or party aggrieved may challenge the accuracy of the Department's subsidized housing inventory by either filing a petition with the Department of Housing and Community Development or raising such a challenge during a proceeding before the Housing Appeals Committee.

SECTION 3. Chapter 40B, Section 20 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by deleting the definition of "low or moderate income housing," and replacing it with the following:

"Low or moderate income housing," any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, or any housing subsidized under any municipal or regional housing program created under G.L. c. 44, §55C, G.L. c. 44B, §§1-16 or other law, and that meets the following eligibility criteria: (1) the housing is restricted for a term of at least thirty years for sale to or occupancy by households earning no more 80% of the area median income as defined by the United Stated Department of Housing and Urban Development (adjusted for household size); (2) housing purchasers or occupants are selected through affirmative, fair marketing practices; and (3) the housing is built or operated by a public agency or a nonprofit or limited dividend organization.

SECTION 4. Chapter 40B, Section 20 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following definition:

"Limited dividend organization," any entity that agrees to limit its profit in the construction of low or moderate income housing. The profit earned from the construction of low or moderate income housing that is sold shall be limited to twenty percent of the total actual development costs, and for housing that rented, the annual returns on investment shall be limited to ten percent of the actual invested equity in the development. Any profit derived from the sale of a development project shall be deemed profit for purposes of this section. All profit in excess of these limitations shall be paid to the municipality where the project is located for the purpose of building, purchasing, managing, maintaining, rehabilitating or facilitating affordable housing

SECTION 5. Chapter 40B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following section:

Section 20(a) – Regional Housing Planning Districts.

(1) Through an inter-municipal agreement governed by Section 4A of Chapter 40, two or more municipalities may create a regional housing planning district in which the municipal members are naturally linked by one or more of the following: (i) watersheds, airsheds, wetlands, wildlife migration, or other common environmental interest or interests; (ii) demographic similarities such as employment centers, cultural traditions, or historic events or interests; or (iii) reliance on shared or common public or private infrastructure or services such as highways, mass transit, water and sewer, education, and solid waste management. A regional housing planning district may be a sub-district within an existing regional planning district created pursuant to Sections 1-8 of Chapter 40B, subject to the consent of the applicable district planning commission and all of the members of the regional housing planning district.

56 (2) The governing body of a regional housing planning district, as may be determined by
57 the municipal members of the district through the inter-municipal agreement, shall adopt a
58 regional comprehensive plan that establishes urban growth boundaries that designate areas
59 within the district that are best suited for compact patterns of residential, commercial and
60 industrial land uses. The regional comprehensive plan shall inventory all land within the urban
61 growth boundaries, project future land use needs over the next 20 years, designate sufficient land
62 within the urban growth boundaries to meet those needs, and develop zoning and environmental
63 regulations for adoption by the member municipalities to effectuate the regional comprehensive
64 plan. The regional comprehensive plan, through the designation of land for residential uses and
65 the creation of development zoning bylaws and regulations to govern said land, shall permit the
66 construction, as of right, of a sufficient quantity of low or moderate income housing units for
67 each member municipality to meet the 10% housing unit minimum threshold set forth in Section
68 20. Zoning bylaws and regulations adopted pursuant to a regional comprehensive plan may
69 provide for construction of said housing to be permitted subject to a site plan review process.
70 Regional housing planning districts shall adopt new or revised regional comprehensive plans that
71 comply with this section every fifteen years. A municipality that elects not to enter into a
72 regional housing planning district agreement may adopt its own municipal comprehensive
73 housing plan. To be eligible for the benefits of this Section 20a, a municipal comprehensive
74 housing plan shall conform to the requirements of this sub-section (2).

75 (3) In municipalities that have adopted urban growth boundary development zoning
76 bylaws set forth in regional or municipal comprehensive plans that accommodate the as of right
77 creation of a sufficient quantity of low or moderate income units to satisfy the 10% housing unit
78 minimum threshold, decisions made by the local board of appeals under Section 21 of Chapter
79 40B shall be deemed consistent with local needs for a period of two years from the effective date
80 of said zoning bylaws, which shall be renewed for additional two year terms if during the
81 preceding two years there has been an increase in the number of low or moderate income
82 housing units in the municipality equal to at least 1% of the municipality's total number of
83 housing units as determined by the last decennial census. New housing that is added to a
84 municipality's subsidized housing inventory may include housing created within another
85 municipality that is a member of the same regional housing planning district, and which is
86 subject to a housing credit allocation agreement as provided under subsection (4). .

87 (4) Municipalities that are members of a regional housing planning district that has
88 adopted a regional comprehensive plan may, by agreement, allocate new or substantially-
89 rehabilitated low or moderate income housing created in one municipality for inclusion on
90 another member's subsidized housing inventory for purposes of Section 20, provided that: (a) the
91 new or substantially-rehabilitated housing is consistent with the regional comprehensive plan; (b)
92 the housing is not included on more than one municipality's subsidized housing inventory; (c)
93 the allocation of housing is made pursuant to housing credit allocation agreement between the

94 municipalities; and (d) no more than fifty percent of the housing included within a municipality's
95 subsidized housing inventory shall be housing allocated from another municipality.

96 SECTION 6. The General Laws shall be amended by adding the following Chapter 44C,
97 entitled "Municipal Initiative Housing Trust Fund."

98 CHAPTER 44C – MUNICIPAL INITIATIVE HOUSING TRUST FUND

99 SECTION 1. There shall be established a separate fund, to be known as the Municipal
100 Initiative Housing Trust Fund, which shall consist of revenues from the following sources:

101 (a) from a surcharge applied to the fees of the registers of deeds to be paid when a
102 document or instrument is recorded. The surcharge shall be $25 per instrument, except for deeds
103 which shall be subject to surcharge equal to $.50 per thousand dollars stated as consideration in
104 the deed; provided, however, that if the document or instrument to be filed includes multiple
105 references to a document or instrument intending or attempting to assign, discharge, release,
106 partially release, subordinate or notice any other document or instrument, each reference shall be
107 separately indexed and separately assessed an additional $25 surcharge. No surcharge shall apply
108 to a declaration of homestead.

109 (b) from a surcharge applied to the fees of the assistant recorder, except as otherwise
110 provided, to be paid when the instrument is left for registering, filing or entering with respect to
111 registered land. The surcharge shall be $25 per instrument, except for deeds which shall be
112 subject to surcharge equal to $.50 per thousand dollars stated as consideration in the deed. No
113 surcharge shall apply to a declaration of homestead. No surcharge shall apply to the fees charged
114 for additional lots shown on plans, for indexing instruments recorded while a petition for
115 registering is pending, for additional certificates of sewer assessments, for old age assistance
116 liens, for duplicates and for photocopies;

117 (c) from public and private sources as gifts, grants and donations to further municipal
118 housing programs; and

119 (d) all other monies credited to or transferred to from any other fund or source pursuant to
120 law.

121 SECTION 2. The state treasurer shall deposit the fund in accordance with the provisions
122 of section 4 in such manner as will secure the highest interest rate available consistent with the
123 safety of the fund and with the requirement that all amounts on deposit be available for
124 withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings
125 shall be deposited into the fund. The fund shall be expended solely for the administration and
126 implementation of this chapter. Any unexpended balances shall be redeposited for future use
127 consistent with the provisions of this chapter.

128 SECTION 3. The state treasurer shall make all disbursements and expenditures from the
129 fund without further appropriation, as directed by the director of the Department of Housing and
130 Community Development in accordance with Section 4. The director shall report by source all
131 amounts credited to said fund and all expenditures from said fund. The director shall assign
132 personnel of the agency as it may need to administer and manage the fund disbursements and any
133 expense incurred by the agency shall be deemed an operating and administrative expense of the
134 program. The operating and administrative expenses shall not exceed ten per cent of the annual
135 total revenue received under the provisions of said section 4. All monies deposited into the fund
136 shall be expended exclusively for the purposes set forth in this chapter.

137 SECTION 4. (a) The director of the Department of Housing and Community
138 Development shall award disbursements of monies from the fund for three purposes: (i) to
139 support the creation of regional housing planning districts established under section 20(a) of
140 chapter 40B; (ii) to support pre-development feasibility analysis and planning associated with the
141 creation or substantial rehabilitation of new low or moderate income housing units that is
142 proposed by regional housing planning districts and/or municipalities in accordance and
143 consistent with a regional or municipal comprehensive plan adopted pursuant to said section
144 20(a), as provided by subsection (b) of this section; and (iii) to subsidize the construction of low
145 or moderate income housing as provided under subsection (c) of this section.

146 (b) Disbursements to support pre-development feasibility analysis and planning
147 associated with the creation or substantial rehabilitation of new low or moderate income housing
148 units shall be limited to housing proposals that create or substantially rehabilitate at least eight
149 housing units, of which at least 50% must be set aside for households earning no greater than
150 80% of the area median income as determined by the United States Department of Housing and
151 Urban Development. The director shall determine the amount of each award based on the
152 reasonably-anticipated pre-development costs, in the director's best judgment and reasonable
153 discretion. The director shall award disbursements equal to the full amount of the reasonably-
154 anticipated predevelopment costs of each proposal unless the applicant requests a smaller
155 disbursement. The director shall deny disbursements requests only under the following
156 circumstances: (i) there are not sufficient monies in the fund; (ii) the proposal does not meet the
157 conditions of this section; or (iii) the director determines that the proposal is not feasible or
158 financially viable.

159 (c) On a biannual basis the director of the Department of Housing and Community
160 Development shall solicit applications for disbursement of monies from the fund from regional
161 housing planning districts and municipalities that are members of such districts for the
162 disbursement of monies from the fund to subsidize the construction of low or moderate income
163 housing. Disbursements under this subsection (b) shall be limited to undisbursed monies from
164 the previous fiscal year, and the aggregate amount of such disbursements in any given year shall
165 not exceed 50% of the undisbursed funds from the previous fiscal year.

166 (d) Disbursement of monies under this section shall only be made for proposals in
167 municipalities that have not attained the 10% housing unit minimum threshold under section 20
168 of chapter 40B, provided however that monies may be disbursed for proposals located in
169 municipalities that have attained the 10% housing unit minimum threshold if the credit for said
170 units will be allocated to a municipality that has not attained said threshold under a legally-
171 binding housing credit allocation agreement under section 20(a)(4) of chapter 40B.

172 (e) In the event that there are insufficient monies in the fund to disburse to meet all of the
173 requests for monies under subsection (a), priority in the disbursement of funds shall be given to
174 municipalities whose aggregate real property value, per capita, is less than the median real
175 property value per capita for the Commonwealth's 351 municipalities.

176 (f) After distributing the trust fund in accordance with this section, the director may keep
177 any remaining funds in the trust for distribution in the following year. No expenditure from said
178 fund shall cause said fund to be in deficiency at the close of a fiscal year.

179 SECTION 7 – Chapter 40B Integrity Study Commission.

180 (a) There is hereby established in, but not of, the Department of Housing and Community
181 Development a Chapter 40B Integrity Study Commission to consist of six members of whom one
182 member shall the Undersecretary of said Department, and five members shall be appointed by
183 the State Auditor. Of the five members appointed by the State Auditor, (i) one shall be an
184 elected member of a board of selectmen or a member of a city or town council of a municipality
185 having a population of 15,000 persons or less; (ii) one shall be an attorney who has experience
186 in, and knowledge of, the permitting and construction of low or moderate income housing under
187 the Act; (iii) one shall be an attorney who has experience representing municipalities in the
188 permitting of low or moderate income housing under the Act; (iv) one shall be a certified public
189 accountant who has experience in, and knowledge of, the permitting and construction of low or
190 moderate income housing under the Act; and (v) one who shall be selected by the Massachusetts
191 Municipal Association. The members shall serve for a term of three years, or until their duties
192 under this Act have been completed as may be determined by the State Auditor. The State
193 Auditor shall designate the chairman of the Board. The chairman shall appoint a vice-chair and
194 any other officers as deemed necessary. The term of appointment shall be three years, or until
195 the duties of the Commission have been completed as may be determined by the State Auditor.
196 The members shall serve without compensation.

197 (b) It shall be the duty of the Commission, nine months after the confirmation of the last
198 member appointed to the Commission, to: (i) determine whether and to what extent private
199 housing developers are earning profits from the construction of low or moderate income housing
200 under Sections 20-23 of Chapter 40B in excess of the limits set by the applicable public subsidy
201 program; (ii) to determine whether and to what extent oversight and auditing mechanisms within
202 said subsidy programs and within the Department of Housing and Community Development are

203 effective in prevent fraud and abuse in the accounting and reporting of profits under said
204 Sections 20-23; and (iii) to recommend legislative and regulatory actions to address fraud and/or
205 profiteering under said Sections 20-23.