SENATE DOCKET, NO. FILED ON: 1/9/2009

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

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Walsh, Marian (SEN)**

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*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 bill:

An Act relative to community preservation.

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Walsh, Marian (SEN) | Suffolk and Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00157 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act relative to community preservation.

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

SECTION 1. Section 2 of Chapter 44B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “destruction,” in line 54, the following words: - including but not limited to capital improvements necessary to extend the useful life of the property and to thereby prevent the property from deteriorating or falling into disrepair,

SECTION 2.   Said chapter 44B, as so appearing, is hereby amended by inserting after said section 2 of said chapter 44B the following section: -

            Section 2A.      The general court hereby finds that there is a critical need to protect and preserve the fundamental character of the communities of the commonwealth which are currently at risk as a result of the loss of open space and park land, the loss and deterioration of historic resources and the inadequate supply of decent and affordable housing for persons and families of low and moderate income.  The disproportionately high value of real estate throughout the commonwealth has resulted in market incentives to develop open spaces, to construct new buildings in place of older historic buildings, and to build high-priced residential housing; it has resulted in sprawl into previously undeveloped areas of the commonwealth at the expense of open spaces and historic resources in the urban centers of the commonwealth; and it has resulted in increased housing costs and the inability of persons and families of low and moderate income to obtain decent and affordable housing in the community in which they are personally connected and invested.  The loss of open space and park land, the loss and deterioration of historic resources and the lack of affordable housing for persons and families of low and moderate income threaten the fundamental character of cities and towns throughout the commonwealth; they threaten the right of the citizens of such cities and towns to clean air and water, to freedom from excessive and unnecessary noise, to the natural scenic, historic and esthetic qualities of their environment and to the conservation and utilization of their agricultural, forest, water, air and other natural resources; they threaten the ability of the citizens of such cities and towns to congregate and to recreate as a community in open spaces and park lands; they threaten the historical, archeological, architectural, and cultural character of cities and towns; they threaten the socio-economic diversity of cities and towns throughout the commonwealth and the accommodation of persons and families of low and moderate income who make significant contributions to the well-being and character of the cities and towns; and for all of these reasons, they threaten the strength, richness, well-being, diversity, and uniqueness of each of the cities and towns throughout the commonwealth.

            It is hereby further found that in cities and towns throughout the commonwealth there is an inadequate supply of decent and affordable rental housing and housing which provides an opportunity for home ownership, either directly or through a condominium or cooperative form of ownership, for persons and families of low and moderate income.  The high cost of land and buildings as well as restrictive zoning and other approvals has produced a critical shortage of adequate housing in the commonwealth adversely affecting the economy of the commonwealth and the well-being of its cities and towns and of its residents.  Private enterprise without the assistance contemplated by this act cannot achieve the creation or preservation of an adequate supply of housing for persons and families of low and moderate income, and the alternative of forcing such families to live in substandard housing is undesirable since it tends to decrease the interest of such families in their communities, the maintenance of their property and the preservation of their neighborhoods.  A large and significant number of commonwealth residents have and will experience hardship in finding decent and affordable housing unless new housing is created and existing housing, where appropriate, is preserved.  Unless the supply of housing is increased significantly and expeditiously, a large number of residents of the commonwealth will be compelled to pay a disproportionate amount of their income for housing to the detriment of the health, welfare and well-being of these persons and of the whole community of which they are a part.  By increasing the housing supply of the commonwealth, the critical shortage of affordable housing will be ameliorated.

            It is hereby further found that traditional financing mechanisms have not provided an adequate dedicated funding source for communities attempting to preserve their fundamental character in the face of the risks and dangers set forth above and that traditional financing mechanisms have been inadequate to provide a means whereby cities and towns may acquire, create and preserve open space, acquire, preserve, rehabilitate and restore historic resources, and create, preserve and support community housing for persons and families of low and moderate income.

            It is hereby further found that the authority and powers conferred under this act and the expenditure of public moneys pursuant thereto constitutes a serving of a valid public purpose and that the enactment of the provisions hereinafter set forth is in the public interest and is hereby so declared to be such as a matter of determination by the general court.

SECTION 3.   Subparagraph (2) of paragraph (e) of section 3 of said Chapter 44B, as so appearing, is hereby amended after the word “rates;” by deleting the word:  - or.

SECTION 4.   Paragraph (e) of said section 3 of said chapter 44B, as so appearing, is hereby further amended by striking out subparagraph (3) and inserting in place thereof the following new subparagraph:  -

            (3)  for an amount not exceeding $100,000 of the value of each taxable parcel of residential real property; or

SECTION 5.   Said paragraph (e) of said section 3 of said chapter 44B, as so appearing, is hereby further amended by inserting after subparagraph (3) of said paragraph (e) the following new subparagraph: -

            (4)  for an amount not exceeding $100,000 of the value of each taxable parcel of class three, commercial, and class four, industrial, property as defined in section 2A of said chapter 59.

SECTION 6.   Subparagraph (2) of paragraph (b) of section 5 of said chapter 44B, as so appearing, is hereby amended by inserting after the word “sites” at the end of the last sentence the following words: - , the committee shall make recommendations with respect to community housing based on the objectives set forth in section 12A(b), and, prior to making any recommendation to the legislative body with respect to community housing, the committee shall make the findings required pursuant to section 12A(f).

SECTION 7.   Said section 5 of said chapter 44B, as so appearing, is hereby amended by inserting after paragraph (f) the following paragraph: -

            (g)  The community preservation committee shall annually but not later than October 15 submit a report to the secretary of the executive office of environmental affairs identifying the parcels of land that were acquired, improved or preserved with monies in the Community Preservation Fund in the preceding fiscal year, the community preservation purpose for which each such parcel is used, and any other information which the secretary requests for purposes of developing and maintaining a database of the parcels throughout the commonwealth that are acquired, improved or preserved under this chapter for community preservation purposes.

SECTION 8.   Section 6 of said chapter 44B, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence: -

In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee and for other administrative and operating expenses incurred by the city or town resulting from its implementation of this chapter, but the annual appropriations for such expenses shall not exceed an amount equal to 5 per cent of the annual revenues deposited in the Community Preservation Fund.

SECTION 9.   Section 7 of said chapter 44B, as so appearing, is hereby amended by inserting after the word “committee” at the end of the last sentence of the second paragraph the following words: - and to the city or town as permitted pursuant to section 6.

SECTION 10. Paragraph (b) of section 9 of said chapter 44B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: -

The state treasurer shall deposit or invest the fund in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time.

SECTION 11. Said section 9 of said chapter 44B, as so appearing, is hereby further amended by striking out paragraph (c) and inserting in place thereof the following: -

            (c)  The state treasurer shall make all disbursements and expenditures from the fund without further appropriation, as directed by the commissioner of revenue in accordance with this section and with section 10.  The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund.  The commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department for such purposes and any expense incurred by the registers of deeds and the assistant recorders to administer and collect the surcharges pursuant to section 8 shall be deemed an operating and administrative expense of the program.  The commissioner of revenue shall annually on October 15 direct the state treasurer to disburse an amount not to exceed one-half of one percent of the annual total revenue received in the preceding fiscal year from a register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register of deeds or assistant recorder to pay operating and administrative expenses of the program certified to the commissioner by the register of deeds or assistant recorder and to disburse an amount not to exceed 5 percent of the annual total revenue received by the state treasurer in the preceding fiscal year under the provisions of said section 8 to the department to pay operating and administrative expenses of the program.

SECTION 12. Paragraph (b) of section 10 of said chapter 44B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: -

The commissioner shall multiply the amount remaining in the fund after any disbursements made for operating and administrative expenses pursuant to section 9(c) by 80 percent.

SECTION 13. Paragraph (g) of said section 10 of said chapter 44B, as so appearing, is hereby amended by striking out the following words in the first sentence: - “and any necessary administrative expenses have been paid in accordance with section 6,”.

SECTION 14. Section 12 of said chapter 44B, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph: -

            (a)  Any real property interest acquired either in whole or in part with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of section 32 of chapter 184, limiting the use of the interest to the purpose for which it was acquired; provided, however, that any permanent deed restriction solely concerning a fee interest in real property that is acquired either in whole or in part with monies from the Community Preservation Fund shall be exempt from the administrative approval requirements of said section 32 of said chapter 184.  The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth.  A right to enforce the deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town.  Notwithstanding the provisions of this section to the contrary, if any portion of community housing is financed by one or more third parties, public or private, that are secured by a mortgage on the property, the deed restriction on any real property interest acquired under this chapter for the purpose of creating, preserving or supporting such community housing may be made subordinate to any such mortgage provided that any party with the right to enforce the deed restriction shall be given a reasonable opportunity to cure the default prior to termination of the deed restriction.

SECTION 15. Said section 12 of said chapter 44B, as so appearing, is hereby further amended by striking out paragraph (b) and inserting in place thereof the following paragraph: -

            (b)  Real property interests acquired under this chapter for the purpose of acquiring, creating, preserving, rehabilitating or restoring open space or for the purpose of acquiring, preserving, rehabilitating or restoring historic resources shall be owned and managed by the city or town, but the legislative body may delegate management of such real property interests to the conservation commission, the historical commission or the board of park commissioners, as applicable, or to a nonprofit organization created under chapter 180 or chapter 203, or, in the case of interests to acquire sites for future wellhead development, such real property interests may be owned and managed by a water district, a water supply district or a fire district.  Real property interests acquired under this chapter for the purpose of creating, preserving, supporting, rehabilitating or restoring community housing may be owned or managed or both by the city or town, the housing authority, any nonprofit organization established by special act of the general court the principal purposes of which include the creation, preservation or support of housing for persons or families of low or moderate income, any nonprofit organization certified by the United States Department of Housing and Urban Development as a community housing development organization, any community development corporation any limited equity cooperative housing corporation established pursuant to chapter 157B of the General Laws or any persons or families of low or moderate income, subject to the provisions of section 12A.

SECTION 16. Said chapter 44B, as so appearing, is hereby further amended by inserting after section 12 the following section: -

            Section 12A.    (a)  An objective of each undertaking for the creation, preservation or support of community housing that is funded in whole or in part under this chapter shall be to provide for decent and affordable housing for persons or families of low or moderate income.  Toward this end, community housing created, preserved or supported in whole or in part under this chapter shall be made available only to persons or families of low or moderate income at a rental cost or purchase price that is affordable for such individuals or families based on then current affordability standards for persons or families of low or moderate income used by the commonwealth or the federal government for programs established to finance affordable housing.  Cities and towns shall, to the extent reasonably able without jeopardizing financial feasibility, take steps to ensure the continued occupancy of any community housing created, preserved, supported, rehabilitated or restored in whole or in part under this chapter by persons or families of low or moderate income or to recoup their investment in the property if the housing is resold and occupied by persons or families who are not of low or moderate income.

            (b)  The community preservation committee shall seek to achieve and shall give preference to opportunities for the creation, preservation, support, rehabilitation or restoration of community housing that satisfy one or more of the following additional objectives:  (1) the reuse of existing buildings or the construction of new buildings on previously developed sites; (2) the leveraging of community preservation funds to maximize other sources of funding; and (3) the maximization of the number of housing units created, preserved or supported for persons and families of low or moderate income.

            (c)  The community preservation committee shall adopt a policy for selecting tenants and purchasers of community housing created, preserved, supported, rehabilitated or restored from funding under this chapter.  The policy shall state:  (i) the eligibility and application requirements for persons or families of low or moderate income interested in renting or purchasing community housing created, preserved, supported, rehabilitated or restored under this chapter; (ii) in the case of rental housing, the eligibility and reporting requirements for continued tenancy of such community housing; (iii) and the priorities to be observed by the owner or manager of the community housing in selecting residents or purchasers, including any local preferences allowed under law.  The resident and purchaser selection policy shall be subject to, and the implementation of such policy shall be carried out in accordance with, the anti-discrimination provisions of G.L. c.151B.  Notwithstanding the provisions of this section to the contrary, rental community housing owned or managed by the housing authority shall be subject to the tenancy selection and continued occupancy requirements set forth in section 32 of chapter 121B.

            (d)  Except as otherwise provided in this chapter, any funds provided to a housing authority under this chapter, or any real property or interest therein acquired under this chapter and transferred to the housing authority for its ownership or management thereof, for the purpose of creating, preserving, supporting, rehabilitating or restoring community housing shall be applied by the housing authority to create, preserve, support, rehabilitate or restore community housing pursuant to the powers granted to, and subject to the conditions and requirements imposed upon, the housing authority under chapter 121B of the General Laws.

            (e)  Prior to providing any loans, grants or other financial assistance to another entity or person for the creation, preservation, support, rehabilitation or restoration of community housing, the board of selectmen or the comparable executive body or officer of a town or the mayor or the comparable executive body or officer of a city shall enter into an agreement with such other entity or person to ensure that the loan, grant or other financial assistance will be applied for the creation, preservation, support, rehabilitation or restoration of community housing, that any benefit to any private entity or person resulting from such loan, grant or financial assistance will be merely incidental to such primary public purpose, and that the other requirements and objectives of this chapter are satisfied.

            (f)  Prior to recommending any funding for the creation, preservation, support, rehabilitation or restoration of community housing to the legislative body of the city or town pursuant to section 5(b)(2) of this chapter, the community preservation committee shall make the following findings with respect to the proposed community housing:  (i) that there exists a shortage of decent and affordable housing available to persons and families of low and moderate income within the city or town; (ii) that private enterprise alone cannot provide decent and affordable housing to persons and families of low or moderate income without governmental assistance; (iii) that the amount of city or town funding recommended for the undertaking is reasonable in light of the number and quality of units of community housing to be created, preserved or supported and in light of the other sources of funding likely to be available for the undertaking; (iv) that the community housing created, preserved or supported as a result of the undertaking will be affordable for persons or families of low or moderate income; (v) if the undertaking involves the construction of new housing on a previously undeveloped site, that, in the opinion of the community preservation committee, no reasonable opportunity then exists to create an equal or greater number of units of community housing at the same cost to the city or town by reusing an existing building then available or constructing the community housing on a previously developed site within the city or town then available for the undertaking; and (vi) if the community housing is to be owned or managed by a private entity or person, that any benefit received by such entity or person as a result of the financial contribution made under this chapter will be merely incidental to the public purpose served by such financial contribution.