

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 to promote local and regional affordable housing planning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex
Jennifer Benson	37th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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).”

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

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

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

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34 “Low or moderate income housing,” any housing subsidized by the federal or state
35 government under any program to assist the construction of low or moderate income
36 housing as defined in the applicable federal or state statute, or any housing subsidized
37 under any municipal or regional housing program created under G.L. c. 44, §55C, G.L. c.
38 44B, §§1-16 or other law, and that meets the following eligibility criteria: (1) the housing
39 is restricted for a term of at least thirty years for sale to or occupancy by households
40 earning no more 80% of the area median income as defined by the United States
41 Department of Housing and Urban Development (adjusted for household size); (2)
42 housing purchasers or occupants are selected through affirmative, fair marketing
43 practices; and (3) the housing is built or operated by a public agency or a nonprofit or
44 limited dividend organization.

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

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

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

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63 Section 20(a) – Regional Housing Planning Districts.

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65 (1) Through an inter-municipal agreement governed by Section 4A of Chapter 40, two or more
66 municipalities may create a regional housing planning district in which the municipal members
67 are naturally linked by one or more of the following: (i) watersheds, airsheds, wetlands, wildlife
68 migration, or other common environmental interest or interests; (ii) demographic similarities
69 such as employment centers, cultural traditions, or historic events or interests; or (iii) reliance
70 on shared or common public or private infrastructure or services such as highways, mass transit,
71 water and sewer, education, and solid waste management. A regional housing planning district
72 may be a sub-district within an existing regional planning district created pursuant to Sections 1-
73 8 of Chapter 40B, subject to the consent of the applicable district planning commission and all of
74 the members of the regional housing planning district.

75
76 (2) The governing body of a regional housing planning district, as may be determined by the
77 municipal members of the district through the inter-municipal agreement, shall adopt a regional
78 comprehensive plan that establishes urban growth boundaries that designate areas within the
79 district that are best suited for compact patterns of residential, commercial and industrial land
80 uses. The regional comprehensive plan shall inventory all land within the urban growth
81 boundaries, project future land use needs over the next 20 years, designate sufficient land
82 within the urban growth boundaries to meet those needs, and develop zoning and
83 environmental regulations for adoption by the member municipalities to effectuate the regional
84 comprehensive plan. The regional comprehensive plan, through the designation of land for
85 residential uses and the creation of development zoning bylaws and regulations to govern said

86 land, shall permit the construction, as of right, of a sufficient quantity of low or moderate
87 income housing units for each member municipality to meet the 10% housing unit minimum
88 threshold set forth in Section 20. Zoning bylaws and regulations adopted pursuant to a regional
89 comprehensive plan may provide for construction of said housing to be permitted subject to a
90 site plan review process. Regional housing planning districts shall adopt new or revised regional
91 comprehensive plans that comply with this section every fifteen years. A municipality that elects
92 not to enter into a regional housing planning district agreement may adopt its own municipal
93 comprehensive housing plan. To be eligible for the benefits of this Section 20a, a municipal
94 comprehensive housing plan shall conform to the requirements of this sub-section (2).

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

108

109 (4) Municipalities that are members of a regional housing planning district that has adopted a
110 regional comprehensive plan may, by agreement, allocate new or substantially-rehabilitated low
111 or moderate income housing created in one municipality for inclusion on another member's
112 subsidized housing inventory for purposes of Section 20, provided that: (a) the new or
113 substantially-rehabilitated housing is consistent with the regional comprehensive plan; (b) the
114 housing is not included on more than one municipality's subsidized housing inventory; (c) the
115 allocation of housing is made pursuant to housing credit allocation agreement between the
116 municipalities; and (d) no more than fifty percent of the housing included within a municipality's
117 subsidized housing inventory shall be housing allocated from another municipality.

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

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CHAPTER 44C – MUNICIPAL INITIATIVE HOUSING TRUST FUND

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

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

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

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

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

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

162
163 SECTION 3. The state treasurer shall make all disbursements and expenditures from the fund
164 without further appropriation, as directed by the director of the Department of Housing and
165 Community Development in accordance with Section 4. The director shall report by source all
166 amounts credited to said fund and all expenditures from said fund. The director shall assign
167 personnel of the agency as it may need to administer and manage the fund disbursements and
168 any expense incurred by the agency shall be deemed an operating and administrative expense
169 of the program. The operating and administrative expenses shall not exceed ten per cent of the
170 annual total revenue received under the provisions of said section 4. All monies deposited
171 into the fund shall be expended exclusively for the purposes set forth in this chapter.

172
173 SECTION 4. (a) The director of the Department of Housing and Community Development shall
174 award disbursements of monies from the fund for three purposes: (i) to support the creation of
175 regional housing planning districts established under section 20(a) of chapter 40B; (ii) to support
176 pre-development feasibility analysis and planning associated with the creation or substantial
177 rehabilitation of new low or moderate income housing units that is proposed by regional
178 housing planning districts and/or municipalities in accordance and consistent with a regional or
179 municipal comprehensive plan adopted pursuant to said section 20(a), as provided by
180 subsection (b) of this section; and (iii) to subsidize the construction of low or moderate income
181 housing as provided under subsection (c) of this section.

182
183 (b) Disbursements to support pre-development feasibility analysis and planning associated with
184 the creation or substantial rehabilitation of new low or moderate income housing units shall be
185 limited to housing proposals that create or substantially rehabilitate at least eight housing units,
186 of which at least 50% must be set aside for households earning no greater than 80% of the area
187 median income as determined by the United States Department of Housing and Urban
188 Development. The director shall determine the amount of each award based on the reasonably-
189 anticipated pre-development costs, in the director's best judgment and reasonable discretion.
190 The director shall award disbursements equal to the full amount of the reasonably-anticipated
191 predevelopment costs of each proposal unless the applicant requests a smaller disbursement.
192 The director shall deny disbursements requests only under the following circumstances: (i) there

193 are not sufficient monies in the fund; (ii) the proposal does not meet the conditions of this
194 section; or (iii) the director determines that the proposal is not feasible or financially viable.

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

203

204 (d) Disbursement of monies under this section shall only be made for proposals in municipalities
205 that have not attained the 10% housing unit minimum threshold under section 20 of chapter
206 40B, provided however that monies may be disbursed for proposals located in municipalities
207 that have attained the 10% housing unit minimum threshold if the credit for said units will be
208 allocated to a municipality that has not attained said threshold under a legally-binding housing
209 credit allocation agreement under section 20(a)(4) of chapter 40B.

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

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

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221 **SECTION 7 – Chapter 40B Integrity Study Commission.**

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223 (a) There is hereby established in, but not of, the Department of Housing and Community
224 Development a Chapter 40B Integrity Study Commission to consist of six members of whom one
225 member shall be the Undersecretary of said Department, and five members shall be appointed by
226 the State Auditor. Of the five members appointed by the State Auditor, (i) one shall be an

227 elected member of a board of selectmen or a member of a city or town council of a municipality
228 having a population of 15,000 persons or less; (ii) one shall be an attorney who has experience
229 in, and knowledge of, the permitting and construction of low or moderate income housing under
230 the Act; (iii) one shall be an attorney who has experience representing municipalities in the
231 permitting of low or moderate income housing under the Act; (iv) one shall be a certified public
232 accountant who has experience in, and knowledge of, the permitting and construction of low or
233 moderate income housing under the Act; and (v) one who shall be selected by the Massachusetts
234 Municipal Association. The members shall serve for a term of three years, or until their duties
235 under this Act have been completed as may be determined by the State Auditor. The State
236 Auditor shall designate the chairman of the Board. The chairman shall appoint a vice-chair and
237 any other officers as deemed necessary. The term of appointment shall be three years, or until
238 the duties of the Commission have been completed as may be determined by the State Auditor.
239 The members shall serve without compensation.

241 (b) It shall be the duty of the Commission, nine months after the confirmation of the last member
242 appointed to the Commission, to: (i) determine whether and to what extent private housing
243 developers are earning profits from the construction of low or moderate income housing under
244 Sections 20-23 of Chapter 40B in excess of the limits set by the applicable public subsidy
245 program; (ii) to determine whether and to what extent oversight and auditing mechanisms within
246 said subsidy programs and within the Department of Housing and Community Development are
247 effective in prevent fraud and abuse in the accounting and reporting of profits under said
248 Sections 20-23; and (iii) to recommend legislative and regulatory actions to address fraud and/or
249 profiteering under said Sections 20-23.

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