

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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:

The School Preservation Act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	1st Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

THE SCHOOL PRESERVATION ACT.

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

1 **Chapter 44C: Section 1. Title**

2

3 Section 1. This chapter shall be known and may be cited as the Massachusetts School Preservation Act.

4

5 **Chapter 44C: Section 2. Definitions**

6 Section 2. As used in this chapter, the following words shall, unless the context clearly indicates a
7 different meaning, have the following meanings:—

8 “Annual income”, a family’s or person’s gross annual income less such reasonable allowances for
9 dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that
10 there is no housing authority, the department of housing and community development, determines.

11 “Legislative body”, the agency of municipal government which is empowered to enact ordinances or by-
12 laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and
13 other financial matters and whether styled as a city council, board of aldermen, town council, town
14 meeting or by any other title.

15 “Real property”, land, buildings, appurtenant structures and fixtures attached to buildings or land,
16 including, where applicable, real property interests.

17 “Real property interest”, a present or future legal or equitable interest in or to real property, including
18 easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a
19 trust which holds a legal or equitable interest in real property, but shall not include an interest which is
20 limited to the following: an estate at will or at sufferance and any estate for years having a term of less
21 than 30 years; the reversionary right, condition or right of entry for condition broken; the interest of a
22 mortgagee or other secured party in a mortgage or security agreement.

23 “School committee,” the school committee of a city or town, as defined in section 31 of Chapter 43 of the
24 General Laws, or the school committee of a regional school district, as defined in section 16A of Chapter
25 71 of the General Laws.

26 “School preservation”, the supplementing of the annual operating budget of a school district or of a
27 regional school district. School preservation shall not include capital expenses, expenses for facilities
28 repairs, expenses for facility maintenance, transportation expenses, athletic expenses, expenses for after-
29 school programming or activities, or other expenses that occur before the school day begins or after the
30 school day ends.

31 “School Preservation Fund”, the municipal fund established under section 7.

32 “SP”, school preservation.

33

34 **Chapter 44C: Section 3. Acceptance of Sections 3 to 6**

35 Section 3. (a) Sections 3 to 6, inclusive, shall take effect in any city or town upon the approval by the
36 legislative body and their acceptance by the voters of a ballot question as set forth in this section.

37 (b) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the
38 legislative body may vote to accept sections 3 to 6, inclusive, by approving a surcharge on real property
39 of not more than 2 per cent of the real estate tax levy against real property, as determined annually by the
40 board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes
41 assessed for purposes of section 21C of said chapter 59.

42 (c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for
43 which a taxpayer qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an
44 exemption of real property authorized by said chapter 59 or any other law shall be exempt from any
45 surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving
46 an abatement of real property authorized by said chapter 59 or any other law shall be reduced in
47 proportion to the amount of such abatement.

48 (d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum
49 provided in section 57 of said chapter 59.

50 (e) The legislative body may also vote to accept one or more of the following exemptions:

51 (1) for property owned and occupied as a domicile by a person who would qualify for low income
52 housing or low or moderate income senior housing in the city or town;

53 (2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said
54 chapter 59, in cities or towns with classified tax rates; or

55 (3) for \$100,000 of the value of each taxable parcel of residential real property.

56 (4) for \$100,000 of the value of each taxable parcel of commercial property.

57 (f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the
58 voters of a city or town at the next regular municipal or state election. The city or town clerk or the state
59 secretary shall place it on the ballot in the form of the following question: "Shall this (city or town) accept
60 sections 3 to 6, inclusive of chapter 44C of the General Laws, as approved by its legislative body, a
61 summary of which appears below"

62 (Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city
63 solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

64 If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take
65 effect in the city or town, but not otherwise.

66 (g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place
67 such a question on the ballot shall be 35 days before the city or town election or 60 days before the state
68 election.

69 (h) If the legislative body does not vote to accept sections 3 to 6, inclusive, at least 90 days before a
70 regular city or town election or 120 days before a state election, then a question seeking said acceptance
71 through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the
72 ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting
73 such action is filed with the registrars, who shall have seven days after receipt of such petition to certify
74 its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause
75 the question to be placed on the ballot at the next regular city or town election held more than 35 days
76 after such certification or at the next regular state election held more than 60 days after such certification.

77 (i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter
78 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile
79 shall be considered real property owned by that member for the purposes of exemptions provided under
80 this section. The member's portion of the real estate shall be represented by the member's share or shares
81 of stock in the cooperative corporation, and the percentage of that portion to the whole shall be
82 determined by the percentage of the member's shares to the total outstanding stock of the corporation,
83 including shares owned by the corporation. This portion of the real property shall be eligible for any
84 exemption provided in this section if the member meets all requirements for the exemption. Any
85 exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative
86 corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative
87 corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in
88 this subsection shall be construed to affect the tax status of any manufactured home or mobile home under
89 this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home
90 is located if all other requirements of this clause are met. This subsection shall take effect in a city or
91 town upon its acceptance by the city or town.

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93 **Chapter 44B: Section 4. Surcharge on real property; collection**

94 Section 4. (a) Upon acceptance of sections 3 to 6, inclusive, and upon the assessors' warrant to the tax
95 collector, the accepted surcharge shall be imposed.

96 (b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according
97 to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-
98 annually, according to the schedule for collection of property taxes for the tax on real property, to the
99 city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with
100 respect to such surcharge, which shall be subject to public examination upon reasonable request from time
101 to time.

102 (c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the
103 surcharge on real property pursuant to this chapter.

104 **Chapter 44C: Section 5. Recommendations for school preservation**

105 Section 5(a). The school committee shall study the needs, possibilities and resources of the city or town,
106 or of the regional school district, regarding school preservation. The school committee shall consult with
107 existing municipal officials, including the alderman, the selectmen or the city council, and the mayor or
108 the town administrator, and any other officials that the committee considers necessary to consult in

109 conducting such studies. As part of its study, the school committee shall hold one or more public
110 informational hearings on the needs, possibilities and resources of the city or town regarding school
111 preservation possibilities and resources, notice of which shall be posted publicly and published for each of
112 two weeks preceding a hearing in a newspaper of general circulation in the city or town, or cities or
113 towns.

114 (b) The school committee shall make recommendations to the legislative body for the school preservation
115 purposes, or in the case of a regional school district, to the legislative bodies of the member cities or
116 towns.

117 (c) The school committee may include in its recommendation to the legislative body or bodies a
118 recommendation to set aside for later spending funds for specific purposes that are consistent with school
119 preservation but for which sufficient revenues are not then available in the School Preservation Fund to
120 accomplish that specific purpose or to set aside for later spending funds for general purposes that are
121 consistent with community preservation.

122 (d) The school committee shall not meet or conduct business without the presence of a quorum. A
123 majority of the members of the school committee shall constitute a quorum. The school committee shall
124 approve its actions by majority vote. Recommendations to the legislative body shall include their
125 anticipated costs.

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128 **Chapter 44C: Section 6. School preservation fund**

129 Section 6. Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law
130 to the contrary, a city or town that accepts sections 3 to 6, inclusive, shall establish a separate account to
131 be known as the School Preservation Fund of which the municipal treasurer shall be the custodian. The
132 authority to approve expenditures from the fund shall be limited to the legislative body, or a major of the
133 legislative bodies of member cities or towns of a regional school district, and the municipal treasurer shall
134 pay such expenses in accordance with chapter 41.

135 The following monies shall be deposited in the fund: (a) all funds collected from the real property
136 surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 10; and (b) all funds
137 received from the commonwealth or any other source for such purposes. The treasurer may deposit or
138 invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the
139 commonwealth, banking companies incorporated under the laws of the commonwealth which are
140 members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in

141 paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or
142 in shares of federal savings and loan associations doing business in the commonwealth or in the manner
143 authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The
144 expenditure of revenues from the fund shall be limited to implementing the recommendations of the
145 school committee.

146 **Chapter 44C: Section 7. Surcharges; fees of registers of deeds; fees of assistant recorder**

147 Section 7. (a) Except as otherwise provided, the fees of the registers of deeds to be paid when a document
148 or instrument is recorded shall be subject to a surcharge of \$20; provided, however, that if the document
149 or instrument to be filed includes multiple references to a document or instrument intending or attempting
150 to assign, discharge, release, partially release, subordinate or notice any other document or instrument,
151 each reference shall be separately indexed and separately assessed an additional \$20 surcharge. The fee
152 for recording a municipal lien certificate shall be subject to a surcharge of \$10; provided, however, that if
153 the certificate includes multiple references to a document or instrument intending or attempting to assign,
154 discharge, release, partially release, subordinate or notice any other document or instrument, each
155 reference shall be separately indexed and separately assessed an additional \$10 surcharge. The surcharges
156 imposed shall be used for school preservation purposes. No surcharge shall apply to a declaration of
157 homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages,
158 photostatic copies, abstract cards or additional square feet for the recording of plans.

159 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is
160 left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20.
161 The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of
162 \$10. The surcharges shall be imposed for the purposes of school preservation. No surcharge shall apply to
163 a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots
164 shown on plans, for indexing instruments recorded while a petition for registering is pending, for
165 additional certificates of sewer assessments, for old age assistance liens, for duplicates and for
166 photocopies.

167 (c) All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts
168 School Preservation Fund, established in section 8.

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170 **Chapter 44C: Section 8. Massachusetts school preservation trust fund**

171 Section 8. (a) On or before January 1, 2014, there shall be established and set up on the books of the
172 commonwealth a separate fund, to be known as the Massachusetts School Preservation Trust Fund, for

173 the benefit of cities and towns that have accepted sections 3 to 6, inclusive, and pursuant to said sections 3
174 to 6, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions
175 adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1)
176 under the provisions of section 7; (2) from public and private sources as gifts, grants and donations to
177 further school preservation programs; (3) from damages, penalties, costs or interest received on account
178 of litigation or settlement thereof for a violation of section 14; or (4) all other monies credited to or
179 transferred to from any other fund or source pursuant to law.

180 (b) The state treasurer shall deposit the fund in accordance with the provisions of section 8 in such
181 manner as will secure the highest interest rate available consistent with the safety of the fund and with the
182 requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal
183 at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended
184 solely for the administration and implementation of this chapter. Any unexpended balances shall be
185 redeposited for future use consistent with the provisions of this chapter.

186 (c) The state treasurer shall make all disbursements and expenditures from the fund without further
187 appropriation, as directed by the commissioner of revenue in accordance with said section 8. The
188 department of revenue shall report by source all amounts credited to said fund and all expenditures from
189 said fund. The commissioner of revenue shall assign personnel of the department as it may need to
190 administer and manage the fund disbursements and any expense incurred by the department shall be
191 deemed an operating and administrative expense of the program. The operating and administrative
192 expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said
193 section 8.

194 **Chapter 44B: Section 9. Annual distributions of monies in trust fund**

195 Section 10. (a) After the fund is established as provided in section 8, the commissioner of revenue shall
196 annually on October 15 disburse monies from the fund to cities and towns that have accepted sections 3 to
197 6, inclusive, and notified the commissioner of their acceptance. The community shall notify the
198 commissioner of the date and terms on which the voters accepted said sections 3 to 6, inclusive. The
199 municipal tax collecting authority shall certify to the commissioner the amount the municipality has
200 raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage
201 of the surcharge applied.

202 (b) The commissioner shall multiply the amount in the fund by 80 per cent. This amount distributed in the
203 first round distribution shall be known as the match distribution. The first round total shall be distributed
204 to each city or town accepting said sections 3 to 6, inclusive, in an amount not less than 5 per cent but not
205 greater than 100 per cent of the total amount raised by the additional surcharge on real property by each
206 city or town. The percentage shall be the same for each city and town and shall be determined by the

207 commissioner annually in a manner that distributes the maximum amount available to each participating
208 city or town.

209 (c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round
210 distribution, known as the equity distribution. The commissioner shall determine the equity distribution in
211 several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities
212 and towns that have accepted said sections 3 to 6, inclusive. This dividend shall be known as the base
213 figure for equity distribution. This base figure shall be determined solely for purposes of performing the
214 calculation for equity distribution and shall not be added to the amount received by a participant.

215 (d) Each city and town in the commonwealth shall be assigned a school preservation rank for purposes of
216 the equity distribution. The commissioner shall determine each community's rank by first determining the
217 municipality's equalized property valuation per capita ranking, ranking municipalities from highest to
218 lowest valuation. The commissioner shall also determine the population of each municipality and rank
219 each from largest to smallest in population. The commissioner shall add each equalized property
220 valuation rank and population rank, and divide the sum by two. The dividend is the school preservation
221 raw score for that municipality.

222 (e) The commissioner shall then order each municipality by SP raw score, from the lowest raw score to
223 the highest raw score. This order shall be the SP rank for each municipality. If more than one municipality
224 has the same SP raw score, the municipality with the higher equalized valuation rank shall receive the
225 higher SP rank.

226 (f) After determining the SP rank for each municipality in the commonwealth, the commissioner shall
227 divide all municipalities into deciles according to their SP ranking, with approximately the same number
228 of municipalities in each decile, and with the municipalities with the highest SP rank shall be placed in
229 the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as
230 follows:—

231 After assigning each municipality to a decile according to their SP rank, the commissioner shall
232 multiply the percentage assigned to that decile by the base figure to determine the second round equity
233 distribution for each participant.

234 (g) Notwithstanding any other provision of this section, the total state contribution for each city or town
235 shall not exceed the amount raised by the municipality's surcharge on its real property levy.

236 (h) When there are monies remaining in the trust fund after the first and second round distributions, and
237 any necessary administrative expenses have been paid in accordance with section 5, the commissioner

238 may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by
239 dividing the amount of the surplus by the number of cities and towns that have accepted this chapter. The
240 resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories
241 and percentages as defined in this section to determine a surplus equity distribution for each participant.

242 (i) The commissioner shall determine each participant's total state grant by adding the amount received in
243 the first round distribution with the amounts received in any later round or rounds of distributions, with
244 the exception of a city or town that has already received a grant equal to 100 per cent of the amount the
245 community raised by its surcharge on its real property levy.

246 (1) Only those cities and towns that adopt the maximum surcharge allowed by this chapter shall be
247 eligible to receive additional state monies through the equity and surplus distributions.

248 (2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 6,
249 inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may
250 calculate the state grant with only one round of distributions, or in any other equitable manner.

251 (j) After distributing the trust fund in accordance with this section, the commissioner may keep any
252 remaining funds in the trust for distribution in the following year.

253 **Chapter 44B: Section 10. General obligation bonds or notes**

254 Section 10. A city or town that accepts sections 3 to 6, inclusive, may issue, from time to time, general
255 obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of
256 which shall be deposited in the School Preservation Fund. Bonds or notes so issued may be at such rates
257 of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is
258 expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to
259 limit the administrative costs of issuing such bonds by cooperating among each other using methods
260 including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as
261 otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the
262 applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this
263 chapter may be arranged so that for each issue the amounts payable in the several years for principal and
264 interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue
265 bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid
266 amortization of principal.

267 **Chapter 44C: Section 11. Accurate account of recommendations and actions; records of** 268 **appropriations and expenditures and of real property interests**

269 Section 11. The school committee shall keep a full and accurate account of all of its actions, including its
270 recommendations and the action taken on them and records of all appropriations or expenditures made
271 from the School Preservation Fund. The records and accounts shall be public records.

272 **Chapter 44B: Section 12. State grants**

273 Section 12. Notwithstanding the provisions of any general or special law to the contrary, every city and
274 town may accept sections 3 to 6, inclusive, and may thereupon receive state grants under section 9. A city
275 or town that accepts said sections 3 to 6, inclusive, shall not be precluded from participating in state grant
276 programs.

277 State grant programs may include local adoption of this chapter among the criteria for selection of grant
278 recipients. Funds in the School Preservation Fund may be made available and used by the city or town as
279 the local share for state or federal grants upon recommendation of the school committee and the
280 legislative body, as provided for in section 5, if such grants and such local share are used in a manner
281 consistent with the recommendations of the school committee.

282 **Chapter 44B: Section 13. Amendments to amount and computation of surcharge; revocation of**
283 **Sections 3 to 6**

284 Section 13. (a) At any time after imposition of the surcharge, the legislative body may approve and the
285 voters may accept an amendment to the amount and computation of the surcharge, or to the amount of
286 exemption or exemptions, in the same manner and within the limitations set forth in this chapter.

287 (b) At any time after the expiration of five years after the date on which sections 3 to 6, inclusive, have
288 been accepted in a city or town, said sections may be revoked in the same manner as they were accepted
289 by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or
290 town, with respect to unpaid taxes on past transactions and with respect to taxes due on future
291 transactions, until all contractual obligations incurred by the city or town prior to such termination shall
292 have been fully discharged.

293 **Chapter 44B: Section 14. Rules and regulations**

294 Section 14. The commissioner of revenue shall have the authority to promulgate rules and regulations to
295 effect the purposes of this chapter.