

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Walsh, Marian (SEN)

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.

PETITION OF:

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

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:

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

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

7 Section 2A. The general court hereby finds that there is a critical need to protect and
8 preserve the fundamental character of the communities of the commonwealth which are currently
9 at risk as a result of the loss of open space and park land, the loss and deterioration of historic
10 resources and the inadequate supply of decent and affordable housing for persons and families of
11 low and moderate income. The disproportionately high value of real estate throughout the

12 commonwealth has resulted in market incentives to develop open spaces, to construct new
13 buildings in place of older historic buildings, and to build high-priced residential housing; it has
14 resulted in sprawl into previously undeveloped areas of the commonwealth at the expense of
15 open spaces and historic resources in the urban centers of the commonwealth; and it has resulted
16 in increased housing costs and the inability of persons and families of low and moderate income
17 to obtain decent and affordable housing in the community in which they are personally
18 connected and invested. The loss of open space and park land, the loss and deterioration of
19 historic resources and the lack of affordable housing for persons and families of low and
20 moderate income threaten the fundamental character of cities and towns throughout the
21 commonwealth; they threaten the right of the citizens of such cities and towns to clean air and
22 water, to freedom from excessive and unnecessary noise, to the natural scenic, historic and
23 esthetic qualities of their environment and to the conservation and utilization of their agricultural,
24 forest, water, air and other natural resources; they threaten the ability of the citizens of such cities
25 and towns to congregate and to recreate as a community in open spaces and park lands; they
26 threaten the historical, archeological, architectural, and cultural character of cities and towns;
27 they threaten the socio-economic diversity of cities and towns throughout the commonwealth and
28 the accommodation of persons and families of low and moderate income who make significant
29 contributions to the well-being and character of the cities and towns; and for all of these reasons,
30 they threaten the strength, richness, well-being, diversity, and uniqueness of each of the cities
31 and towns throughout the commonwealth.

32 It is hereby further found that in cities and towns throughout the commonwealth there is
33 an inadequate supply of decent and affordable rental housing and housing which provides an
34 opportunity for home ownership, either directly or through a condominium or cooperative form

35 of ownership, for persons and families of low and moderate income. The high cost of land and
36 buildings as well as restrictive zoning and other approvals has produced a critical shortage of
37 adequate housing in the commonwealth adversely affecting the economy of the commonwealth
38 and the well-being of its cities and towns and of its residents. Private enterprise without the
39 assistance contemplated by this act cannot achieve the creation or preservation of an adequate
40 supply of housing for persons and families of low and moderate income, and the alternative of
41 forcing such families to live in substandard housing is undesirable since it tends to decrease the
42 interest of such families in their communities, the maintenance of their property and the
43 preservation of their neighborhoods. A large and significant number of commonwealth residents
44 have and will experience hardship in finding decent and affordable housing unless new housing
45 is created and existing housing, where appropriate, is preserved. Unless the supply of housing is
46 increased significantly and expeditiously, a large number of residents of the commonwealth will
47 be compelled to pay a disproportionate amount of their income for housing to the detriment of
48 the health, welfare and well-being of these persons and of the whole community of which they
49 are a part. By increasing the housing supply of the commonwealth, the critical shortage of
50 affordable housing will be ameliorated.

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

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

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

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

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

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

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

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

78 recommendation to the legislative body with respect to community housing, the committee shall
79 make the findings required pursuant to section 12A(f).

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

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

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

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

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

100 SECTION 10. Paragraph (b) of section 9 of said chapter 44B, as so appearing, is hereby
101 amended by striking out the first sentence and inserting in place thereof the following sentence: -
102 The state treasurer shall deposit or invest the fund in such manner as will secure the highest
103 interest rate available consistent with the safety of the fund and with the requirement that all
104 amounts on deposit be available for withdrawal without penalty for such withdrawal at any time.

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

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

118 provisions of section 8 to such register of deeds or assistant recorder to pay operating and
119 administrative expenses of the program certified to the commissioner by the register of deeds or
120 assistant recorder and to disburse an amount not to exceed 5 percent of the annual total revenue
121 received by the state treasurer in the preceding fiscal year under the provisions of said section 8
122 to the department to pay operating and administrative expenses of the program.

123 SECTION 12. Paragraph (b) of section 10 of said chapter 44B, as so appearing, is hereby
124 amended by striking out the first sentence and inserting in place thereof the following sentence: -
125 The commissioner shall multiply the amount remaining in the fund after any disbursements made
126 for operating and administrative expenses pursuant to section 9(c) by 80 percent.

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

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

132 (a) Any real property interest acquired either in whole or in part with monies from the
133 Community Preservation Fund shall be bound by a permanent deed restriction that meets the
134 requirements of section 32 of chapter 184, limiting the use of the interest to the purpose for
135 which it was acquired; provided, however, that any permanent deed restriction solely concerning
136 a fee interest in real property that is acquired either in whole or in part with monies from the
137 Community Preservation Fund shall be exempt from the administrative approval requirements of
138 said section 32 of said chapter 184. The deed restriction shall run with the land and shall be

139 enforceable by the city or town or the commonwealth. A right to enforce the deed restriction
140 may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the
141 city or town. Notwithstanding the provisions of this section to the contrary, if any portion of
142 community housing is financed by one or more third parties, public or private, that are secured
143 by a mortgage on the property, the deed restriction on any real property interest acquired under
144 this chapter for the purpose of creating, preserving or supporting such community housing may
145 be made subordinate to any such mortgage provided that any party with the right to enforce the
146 deed restriction shall be given a reasonable opportunity to cure the default prior to termination of
147 the deed restriction.

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

150 (b) Real property interests acquired under this chapter for the purpose of acquiring,
151 creating, preserving, rehabilitating or restoring open space or for the purpose of acquiring,
152 preserving, rehabilitating or restoring historic resources shall be owned and managed by the city
153 or town, but the legislative body may delegate management of such real property interests to the
154 conservation commission, the historical commission or the board of park commissioners, as
155 applicable, or to a nonprofit organization created under chapter 180 or chapter 203, or, in the
156 case of interests to acquire sites for future wellhead development, such real property interests
157 may be owned and managed by a water district, a water supply district or a fire district. Real
158 property interests acquired under this chapter for the purpose of creating, preserving, supporting,
159 rehabilitating or restoring community housing may be owned or managed or both by the city or
160 town, the housing authority, any nonprofit organization established by special act of the general

161 court the principal purposes of which include the creation, preservation or support of housing for
162 persons or families of low or moderate income, any nonprofit organization certified by the
163 United States Department of Housing and Urban Development as a community housing
164 development organization, any community development corporation any limited equity
165 cooperative housing corporation established pursuant to chapter 157B of the General Laws or
166 any persons or families of low or moderate income, subject to the provisions of section 12A.

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

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

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

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

202 (d) Except as otherwise provided in this chapter, any funds provided to a housing
203 authority under this chapter, or any real property or interest therein acquired under this chapter

204 and transferred to the housing authority for its ownership or management thereof, for the purpose
205 of creating, preserving, supporting, rehabilitating or restoring community housing shall be
206 applied by the housing authority to create, preserve, support, rehabilitate or restore community
207 housing pursuant to the powers granted to, and subject to the conditions and requirements
208 imposed upon, the housing authority under chapter 121B of the General Laws.

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

218 (f) Prior to recommending any funding for the creation, preservation, support,
219 rehabilitation or restoration of community housing to the legislative body of the city or town
220 pursuant to section 5(b)(2) of this chapter, the community preservation committee shall make the
221 following findings with respect to the proposed community housing: (i) that there exists a
222 shortage of decent and affordable housing available to persons and families of low and moderate
223 income within the city or town; (ii) that private enterprise alone cannot provide decent and
224 affordable housing to persons and families of low or moderate income without governmental
225 assistance; (iii) that the amount of city or town funding recommended for the undertaking is

226 reasonable in light of the number and quality of units of community housing to be created,
227 preserved or supported and in light of the other sources of funding likely to be available for the
228 undertaking; (iv) that the community housing created, preserved or supported as a result of the
229 undertaking will be affordable for persons or families of low or moderate income; (v) if the
230 undertaking involves the construction of new housing on a previously undeveloped site, that, in
231 the opinion of the community preservation committee, no reasonable opportunity then exists to
232 create an equal or greater number of units of community housing at the same cost to the city or
233 town by reusing an existing building then available or constructing the community housing on a
234 previously developed site within the city or town then available for the undertaking; and (vi) if
235 the community housing is to be owned or managed by a private entity or person, that any benefit
236 received by such entity or person as a result of the financial contribution made under this chapter
237 will be merely incidental to the public purpose served by such financial contribution.