

SENATE No. 90

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 sustain community preservation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	First Middlesex and Norfolk
Stephen Kulik	1st Franklin
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Frank I. Smizik	15th Norfolk
Joan M. Menard	First Bristol and Plymouth
James E. Vallee	10th Norfolk
Robert A. O'Leary	Cape and Islands
Matthew C. Patrick	3rd Barnstable
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Harriette L. Chandler	First Worcester
Bruce J. Ayers	1st Norfolk
James B. Eldridge	Middlesex and Worcester
Stanley C. Rosenberg	Hampshire and Franklin
Scott P. Brown	Norfolk, Bristol and Middlesex
Jennifer L. Flanagan	Worcester and Middlesex
Benjamin B. Downing	Berkshire, Hampshire and Franklin
James E. Timilty	Bristol and Norfolk
Patricia D. Jehlen	Second Middlesex
Susan C. Tucker	Second Essex and Middlesex

Susan C. Fargo	Third Middlesex
Kenneth J. Donnelly	Fourth Middlesex
Stephen J. Buoniconti	Hampden
Bruce E. Tarr	First Essex and Middlesex
Marc R. Pacheco	First Plymouth and Bristol
Robert L. Hedlund	Plymouth and Norfolk
Gale D. Candaras	First Hampden and Hampshire
Cleon H. Turner	1st Barnstable
Barbara A. L'Italien	18th Essex
Kate Hogan	3rd Middlesex
Peter V. Kocot	1st Hampshire
Steven J. D'Amico	4th Bristol
Timothy J. Toomey, Jr.	26th Middlesex
Jason Lewis	31st Middlesex
Alice K. Wolf	25th Middlesex
Alice Hanlon Peisch	14th Norfolk
James R. Miceli	19th Middlesex
Denis E. Guyer	2nd Berkshire
Timothy Madden	Barnstable, Dukes and Nantucket
Rosemary Sandlin	3rd Hampden
Joyce A. Spiliotis	12th Essex
Carolyn Dykema	8th Middlesex
Sarah K. Peake	4th Barnstable
William N. Brownsberger	24th Middlesex
James J. O'Day	14th Worcester District
Jay R. Kaufman	15th Middlesex
Jeffrey Davis Perry	5th Barnstable
Cory Atkins	14th Middlesex
Ellen Story	3rd Hampshire
Christine E. Canavan	10th Plymouth
Garrett J. Bradley	3rd Plymouth
Geraldine Creedon	11th Plymouth
Anne M. Gobi	5th Worcester
Kay Khan	11th Middlesex
Jennifer Benson	37th Middlesex
William M. Straus	10th Bristol
Stephen R. Canessa	12th Bristol
Louis L. Kafka	8th Norfolk
James M. Murphy	4th Norfolk
James T. Welch	6th Hampden
John W. Scibak	2nd Hampshire
Michael J. Rodrigues	8th Bristol

Thomas P. Conroy	13th Middlesex
Geraldo Alicea	6th Worcester
Carlo P. Basile	1st Suffolk
James Cantwell	4th Plymouth
Cheryl A. Coakley-Rivera	10th Hampden
Todd M. Smola	1st Hampden
Richard J. Ross	9th Norfolk
Paul McMurtry	11th Norfolk
Ann-Margaret Ferrante	5th Essex
Harold P. Naughton, Jr.	12th Worcester
John D. Keenan	7th Essex
Colleen M. Garry	36th Middlesex
John F. Quinn	9th Bristol
Susan Williams Gifford	2nd Plymouth
Thomas J. Calter	12th Plymouth
Lida E. Harkins	13th Norfolk
Mark V. Falzone	9th Essex
Benjamin Swan	11th Hampden
Robert L. Rice, Jr.	2nd Worcester
Thomas M. Stanley	9th Middlesex

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
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AN ACT TO SUSTAIN COMMUNITY PRESERVATION.

Whereas, the deferred operation for this act would tend to defeat its purpose, which is forthwith to continue the commonwealth's commitment and partnership with cities and towns to enhance affordable housing, park and open space preservation and historic preservation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 Two is hereby amended by removing the definition of
2 “Rehabilitation” and inserting in place thereof the following:-
3 "Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to
4 historic resources, open spaces, lands for recreational use and community housing, but not
5 including maintenance, for the purpose of making such historic resources, open spaces, lands for
6 recreational use and community housing functional for their intended use, including but not
7 limited to improvements to comply with the Americans with Disabilities Act and other federal,
8 state or local building or access codes. With respect to historic resources, rehabilitation shall
9 have the additional meaning of work to comply with the Standards for Rehabilitation stated in
10 the United States Secretary of the Interior's Standards for the Treatment of Historic Properties

11 codified in 36 C.F.R. Part 68. With respect to land for recreational use, rehabilitation shall
12 include the replacement of playground equipment and other capital improvements to the land or
13 the facilities thereon which make the land or the related facilities more functional for the related
14 recreational use.

15 "Support of Community housing", shall include, but not be limited to, programs that provide
16 grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of
17 assistance directly to qualified individuals and families or to housing for the purpose of making
18 housing affordable to low or moderate income individuals and families.

19 SECTION 2. Section 3 of said Chapter 44B, as appearing in the 2004 Official Edition is
20 hereby amended by adding after paragraph (b) the following new paragraph:-

21 (b 1/2) As an alternative to subsection (b) of section 3, the legislative body may vote to
22 accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per
23 cent of the real estate tax levy against real property, and making an additional commitment of
24 funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real
25 property, provided that additional funds so committed shall come from another source or sources
26 of municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter
27 64G of the general laws, linkage fee and inclusionary zoning payments, however authorized, the
28 sale of municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines
29 and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws,
30 existing dedicated housing, open space and historic preservation funds, however authorized, and
31 provided further that additional funds so committed shall not include any federal funds or funds
32 from private sources, provided that inclusionary zoning payments and linkage fees shall be

33 considered public funds for the purposes of this chapter. The total funds committed to the
34 Community Preservation Act under this subsection shall not exceed 3% of the real estate tax levy
35 against real property, less exemptions adopted.

36 In the event that the municipality shall no longer dedicate all or part of the additional funds
37 to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but
38 may be reduced pursuant to section 16.

39 SECTION 3: Section 3 of said chapter 44B is hereby amended by inserting after paragraph e
40 (3) the following new paragraph:-

41 (4) for \$100,000 of the value of each taxable parcel of class three, commercial, and class
42 four, industrial, property as defined in section 2A of said chapter 59.

43 SECTION 4. Section 5 of the Chapter 44B, as most recently amended by Chapter 289 of the
44 Acts of 2006 is hereby amended by striking paragraph (b)(2) in its entirety and inserting in place
45 thereof the following:-

46 (2) The community preservation committee shall make recommendations periodically
47 throughout the year, or as a single yearly recommendation to the legislative body for the
48 acquisition, creation and preservation of open space; for the acquisition, preservation,
49 rehabilitation and restoration of historic resources; for the acquisition, creation, preservation,
50 rehabilitation and restoration of land for recreational use; for the acquisition, creation,
51 preservation and support of community housing; and for the rehabilitation or restoration of open
52 space and community housing that is acquired or created as provided in this section. With respect
53 to community housing, the community preservation committee shall recommend, wherever
54 possible, the reuse of existing buildings or construction of new buildings on previously

55 developed sites. With respect to recreational use, the acquisition of artificial turf for athletic
56 fields shall be prohibited.

57 SECTION 5. Said Section 5 is further amended by striking paragraph (d) and inserting in
58 place thereof the following:-

59 (d) After receiving such recommendations from the community preservation committee, the
60 legislative body shall then take such action and approve such appropriations from the
61 Community Preservation Fund as set forth in section 7, and such additional non CPA
62 appropriations as it deems appropriate to carry out the recommendations of the community
63 preservation committee. In the case of a city, the ordinance shall provide for the mechanisms
64 under which the legislative body may approve and veto appropriations made pursuant to this
65 chapter, in accordance with the city charter.

66 SECTION 6. Section 6 of Chapter 44B is hereby amended by striking it in its entirety and
67 inserting in place thereof the following:-

68 Section 6. In every fiscal year and upon the recommendation of the community preservation
69 committee, the legislative body shall spend, or set aside for later spending, not less than 10 per
70 cent of the annual revenues in the Community Preservation Fund for open space, not less than 10
71 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual
72 revenues for community housing. In each fiscal year, the legislative body shall make such
73 appropriations from the Community Preservation Fund as it deems necessary for the
74 administrative and operating expenses of the community preservation committee, but the
75 appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation
76 Fund. The legislative body may also make such appropriations from the Community

77 Preservation Fund as it deems necessary for direct costs associated with a municipality's first
78 year implementation, including but not limited to tax billing software or hiring outside vendors,
79 provided that the total of any administrative and operating expense of the Community
80 Preservation Committee and the first year implementation expenses do not exceed five per cent
81 of the annual revenues in the Community Preservation Fund.

82 Funds that are set aside shall be held in the Community Preservation Fund and spent in that
83 year or later years, but funds set aside for a specific purpose shall be spent only for the specific
84 purpose. Any funds set aside may be expended in any city or town in the commonwealth. The
85 community preservation funds shall not replace existing operating funds, only augment them.

86 SECTION 7. The second paragraph of Section 7 of Chapter 44B is amended by striking the
87 first sentence and inserting in place thereof the following:-

88 The following monies shall be deposited in the fund: (a) all funds collected from the real
89 property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b)
90 if applicable, additional funds appropriated or dedicated from allowable municipal sources
91 pursuant to subsection (b ½) of section 3; (c) all funds received from the commonwealth or any
92 other source for such purposes; and (d) proceeds from the disposal of real property acquired with
93 funds from the Community Preservation Fund.

94 SECTION 8. Section 8 of Chapter 44B is hereby amended by striking it in its entirety and
95 inserting in place thereof the following:-

96 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid when
97 the instrument is left for recording, filing or deposit shall be subject to a surcharge of \$20. The
98 fees for so recording, filing or depositing a municipal lien certificate shall be subject to a

99 surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation.
100 No surcharge shall apply to a declaration of homestead under chapter 188 or to the filing of a
101 third mortgage or fourth mortgage extended by any public agency or quasi public agency,
102 including but not limited to a Commonwealth municipality or the Massachusetts Housing
103 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,
104 abstract cards, additional square feet for the filing and recording of plans or for additional or
105 required marginal references.

106 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the
107 instrument is left for registering, filing or entering with respect to registered land shall be subject
108 to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate
109 shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of
110 community preservation. No surcharge shall apply to a declaration of homestead of chapter 188
111 or to the filing of a third mortgage or fourth mortgage extended by any public agency, including
112 but not limited to a Commonwealth municipality or the Massachusetts Housing Partnership. No
113 surcharge shall apply to the fees charged for additional lots shown on plans, for indexing
114 instruments recorded while a petition for registering is pending, for additional certificates of
115 sewer assessments, for old age assistance liens, for duplicates and for photocopies.

116 (c) Notwithstanding subsections (a) and (b) of section 8, in the event that the Massachusetts
117 Community Preservation Trust Fund balance is insufficient to support a 75% first round match
118 distribution pursuant to section 10 for all cities and towns that have accepted sections 3 to 7
119 inclusive, as certified by the commissioner of revenue on October 1st of each year, the fees of
120 the registry of deeds and fees of the assistant recorder to be paid when the instrument is left for
121 recording, filing or deposit and the fee for so recording, filing or depositing a municipal lien

122 certificate shall be subject to a surcharge to be determined by the commissioner of the
123 department of revenue necessary to support, by the commissioner's best reasonable estimate, a
124 75% first round match for the following fiscal year, with each fee rounded to the nearest dollar.
125 Under no circumstances shall each fee surcharge to be paid to the register of deeds or assistant
126 recorder when the instrument is left for recording, filing or deposit for community preservation
127 be greater than \$70. Under no circumstances shall each fee surcharge paid to the register of
128 deeds or assistant recorder for so recording, filing or depositing a municipal lien certificate for
129 community preservation be greater than \$40.

130 The surcharges shall be imposed for the purposes of community preservation. No community
131 preservation surcharges shall apply to a declaration of homestead under chapter 188 to the filing
132 of a third mortgage or fourth mortgage extended by any public agency, including but not limited
133 to a Commonwealth municipality or the Massachusetts Housing Partnership. No surcharge shall
134 apply to the fees charged for additional pages, photostatic copies, abstract cards, additional
135 square feet for the filing and recording of plans or for additional or required marginal references.

136

137 (d) Each fiscal year, the commissioner of the department of revenue shall certify the fees
138 pursuant to section 8. The commissioner of revenue shall notify the registers of deeds, the
139 assistant recorders, and the joint committee on revenue of the change at least ninety days prior to
140 the first day of the fiscal year.

141 (e) All surcharges on fees collected pursuant to this section shall be forwarded to the
142 Massachusetts Community Preservation Trust Fund, established in section 9.

143 SECTION 9. Paragraph (c) of Section 9 of said Chapter 44B is hereby amended by striking
144 said paragraph and inserting in place therefore the following:-

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

161 SECTION 10. Section 10 of Chapter 44B is amended by striking it in its entirety and
162 inserting in place thereof the following:-

163 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse monies
164 from the fund established in section 9 to cities and towns that have accepted sections 3 to 7,
165 inclusive, and notified the commissioner of their acceptance. The community shall notify the
166 commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive.
167 The municipal tax collecting authority shall certify to the commissioner the amount the

168 municipality has raised through June 30 by imposing a surcharge on its real property levy and
169 shall certify the percentage of the surcharge applied. In the event a municipality accepts this act
170 pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to
171 the commissioner by October 30th, the maximum additional funds the municipality intends to
172 transfer to the Community Preservation Fund from allowable municipal sources for the following
173 fiscal year. Once certified, the municipality may choose to transfer less than the certified amount
174 during the following fiscal year.

175 (b) The commissioner shall multiply the amount remaining in the fund after any
176 disbursements for operating and administrative expenses pursuant to section 9(c) by 80 per cent.
177 This amount distributed in the first round distribution shall be known as the match distribution.
178 The first round total shall be distributed to each city or town accepting said sections 3 to 7,
179 inclusive, in an amount not less than 75 per cent but not greater than 100 per cent of the total
180 amount raised by the additional surcharge on real property by each city or town and if applicable
181 the additional funds committed from allowable municipal sources pursuant to subsection (b 1/2) of
182 section 3. The percentage shall be the same for each city and town and shall be determined by
183 the commissioner annually in a manner that distributes the maximum amount available to each
184 participating city or town.

185 (c) The commissioner shall further divide the remaining 20 per cent of the fund in a second
186 round distribution, known as the equity distribution. The commissioner shall determine the
187 equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of
188 the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This
189 dividend shall be known as the base figure for equity distribution. This base figure shall be

190 determined solely for purposes of performing the calculation for equity distribution and shall not
191 be added to the amount received by a participant.

192 (d) Each city and town in the commonwealth shall be assigned a community preservation
193 rank for purposes of the equity distribution. The commissioner shall determine each community's
194 rank by first determining the municipality's equalized property valuation per capita ranking,
195 ranking municipalities from highest to lowest valuation. The commissioner shall also determine
196 the population of each municipality and rank each from largest to smallest in population. The
197 commissioner shall add each equalized property valuation rank and population rank, and divide
198 the sum by two. The dividend is the community preservation raw score for that municipality.

199 (e) The commissioner shall then order each municipality by CP raw score, from the lowest
200 raw score to the highest raw score. This order shall be the CP rank for each municipality. If more
201 than one municipality has the same CP raw score, the municipality with the higher equalized
202 valuation rank shall receive the higher CP rank.

203 (f) After determining the CP rank for each municipality in the commonwealth, the
204 commissioner shall divide all municipalities into deciles according to their CP ranking, with
205 approximately the same number of municipalities in each decile, and with the municipalities with
206 the highest CP rank shall be placed in the lowest decile category, starting with decile 10.
207 Percentages shall be assigned to each decile as follows:

208 decile 1 140 per cent of the base figure

209 decile 2 130 per cent of the base figure

210 decile 3 120 per cent of the base figure

211 decile 4 110 per cent of the base figure

212 decile 5 100 per cent of the base figure

213 decile 6 90 per cent of the base figure

214 decile 7 80 per cent of the base figure

215 decile 8 70 per cent of the base figure

216 decile 9 60 per cent of the base figure

217 decile 10 50 per cent of the base figure

218 After assigning each municipality to a decile according to their CP rank, the commissioner
219 shall multiply the percentage assigned to that decile by the base figure to determine the second
220 round equity distribution for each participant.

221 (f) Notwithstanding any other provision of this section, the total state contribution for each
222 city or town shall not exceed the actual amount raised by the municipality's surcharge on its real
223 property levy, and if applicable, additional funds committed from allowable municipal sources
224 pursuant to subsection b (1/2) of section 3.

225 (g) When there are monies remaining in the trust fund after the first and second round
226 distributions, and any necessary administrative expenses have been paid in accordance with
227 section 9, the commissioner may conduct a third round surplus distribution. Any remaining
228 surplus in the fund may be distributed by dividing the amount of the surplus by the number of
229 cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base
230 figure. The commissioner shall then use the decile categories and percentages as defined in this
231 section to determine a surplus equity distribution for each participant.

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

237 (1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection
238 (b) of section (3) and those cities and towns that adopt the maximum surcharge and additional
239 funds committed from allowable municipal sources such that the total funds are the equivalent of
240 3 per cent of the real estate tax levy against real property pursuant to subsection (b 1/2) of section
241 3 of this chapter shall be eligible to receive additional state monies through the equity and
242 surplus distributions.

243 (2) If less than 10 per cent of the cities and towns in the commonwealth have accepted
244 sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the
245 commissioner may calculate the state grant with only one round of distributions, or in any other
246 equitable manner.

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

249 SECTION 11. Section 12 of Chapter 44B is amended by striking it in its entirety and
250 inserting in place thereof the following:-

251 (a) A real property interest that is acquired with monies from the Community Preservation
252 Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184,
253 limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall

254 run with the land and shall be enforceable by the city or town or the commonwealth. The deed
255 restriction may also run to the benefit of a nonprofit, charitable corporation or foundation
256 selected by the city or town with the right to enforce the restriction. In the event that there is a
257 deed restriction placed on any real property pursuant to this chapter, the legislative body is
258 authorized to appropriate monies from the Community Preservation Fund to pay a non-profit
259 organization created pursuant to Chapter 180 to hold, monitor and enforce the deed restriction on
260 said property.

261 (b) Real property interests acquired under this chapter shall be owned and managed by the
262 city or town, but the legislative body may delegate management of such property to the
263 conservation commission, the historical commission, the board of park commissioners or the
264 housing authority, or, in the case of interests to acquire sites for future wellhead development by
265 a water district, a water supply district or a fire district. The legislative body may also delegate
266 management of such property to a nonprofit organization created under chapter 180 or chapter
267 203. The legislative body may also transfer ownership of such property acquired under this
268 chapter to a nonprofit organization created under chapter 180 or chapter 203, provided that in the
269 event of such a transfer, the municipality shall retain a permanent deed restriction pursuant to
270 Chapter 184 to maintain the property for the purpose it was authorized to be acquired for by the
271 legislative body. The legislative body may appropriate monies necessary to transfer ownership
272 of a property between two entities so long as a deed restriction is acquired and maintained by the
273 town or city.

274 SECTION 12. Section 16 of said Chapter 44B is hereby amended by striking paragraph (a)
275 and inserting in place thereof the following:-

276 (a) At any time after imposition of the surcharge, the legislative body may approve and the
277 voters may accept an amendment to the amount and computation of the surcharge, or to the
278 amount of exemption or exemptions, in the same manner and within the limitations set forth in
279 this chapter, including reducing the surcharge to 1 per cent and committing additional municipal
280 funds pursuant to subsection (b 1/2) of section 3.

281 SECTION 13. Notwithstanding any general or special law to the contrary, this Act shall
282 apply to all Community Preservation Fund appropriations approved by a city or town's
283 legislative body on or after the effective date of acceptance of the Community Preservation Act
284 in such city or town."