



Amendment #737 to H04100

Community Preservation Act (CPA) Amendment

Representatives Kulik of Worthington, Jones of North Reading, Dempsey of Haverhill, Andrews of Orange, Ayers of Quincy, Atkins of Concord, Balsler of Newton, Barrows of Mansfield, Basile of Boston, Bastien of Gardner, Beaton of Shrewsbury, Benson of Lunenburg, Cantwell of Marshfield, Conroy of Wayland, Creedon of Brockton, D'Emilia of Bridgewater, Dykema of Holliston, Fallon of Malden, Ferguson of Holden, Fernandes of Milford, Ferrante of Gloucester, Finn of West Springfield, Forry of Boston, Garballey of Arlington, Garlick of Needham, Gifford of Wareham, Gobi of Spencer, Hecht of Watertown, Hill of Ipswich, Hogan of Stow, Holmes of Boston, Howitt of Seekonk, Humason of Westfield, Hunt of Sandwich, Kafka of Stoughton, Kaufman of Lexington, Khan of Newton, Kocot of Northampton, Koczera of New Bedford, Kuros of Uxbridge, Lewis of Winchester, McMurtry of Dedham, Miceli of Wilmington, O'Day of West Boylston, Parisella of Beverly, Peake of Provincetown, Peisch of Wellesley, Peterson of Grafton, Provost of Somerville, Puppolo of Springfield, Sannicandro of Ashland, Scibak of South Hadley, Sciortino of Medford, Schmid of Westport, Smizik of Brookline, Smola of Palmer, Stanley of Waltham, Story of Amherst, Straus of Mattapoisett, Timilty of Milton, Toomey of Cambridge, Torrissi of North Andover, Vieira of Falmouth, Walsh of Framingham, Walsh of Boston, Walz of Boston, Winslow of Norfolk and Wolf of Cambridge moves to amend the bill by adding at the end thereof the following section:

SECTION XX. Chapter 44B of the General Laws is hereby amended by striking out section 2 and inserting in place thereof the following section:-

"Acquire", to obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise; provided, however that "acquire" shall not include a taking by eminent domain, except as provided in this chapter.

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

"Capital improvement", reconstruction or alteration of real property that (1) materially adds to the value of the real property, or appreciably prolongs the useful life of the real property, (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time.

"Community housing", low and moderate income housing for individuals and families, including low or moderate income senior housing.

"Community preservation", the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

"Community preservation committee", the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

"Community Preservation Fund", the municipal fund established under section 7.

"Historic resources," a building, structure, vessel, real property, document or artifact that is listed on the state register of historic places or has been

determined by the local historic preservation commission to be significant in the history, archaeology, architecture or culture of a city or town.

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

“Low income housing”, housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Low or moderate income senior housing”, housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

“Maintenance”, incidental repairs which neither materially add to the value of the property or appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness.

“Moderate income housing”, housing for those persons and families whose annual income is less than 100 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Open space”, shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

“Preservation”, protection of personal or real property from injury, harm or destruction.

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

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

“Recreational use”, active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. “Recreational use” shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

“Rehabilitation”, capital improvements, or the making of extraordinary repairs, to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended use, including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's

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

"Support of Community housing", shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to housing, for the purpose of making housing affordable.

SECTION XX. Section 3 of chapter 44B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding after paragraph (b) the following new paragraph: -

(b 1/2) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property, and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue, including, but not limited to, hotel excise taxes pursuant to chapter 64G, linkage fee and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, gifts received from private sources for community preservation purposes, and provided further that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

SECTION XX. Subsection (e) of said section 3 of chapter 44B, as so appearing, is hereby amended by inserting the following new clause :-

(4) for \$100,000 of the value of each taxable parcel of class 3, commercial property, and class four, industrial property as defined in section 2A of said chapter 59.

SECTION XX. Subsection (b) of section 5 of said chapter 44B, as so appearing, is hereby amended by inserting after the word "preservation", in lines 23 and 24, the following words:-

, including the consideration of regional projects for community preservation.

SECTION XX. Said subsection (b) of said section 5 of said chapter 44B, as so appearing, is hereby further amended by striking paragraph (2) and inserting in place thereof the following paragraph: -

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for the rehabilitation or restoration of open space and community housing that is acquired or created as provided in this section; provided, however, that funds expended pursuant to this chapter may not be used for maintenance. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. With respect to recreational use, the acquisition of artificial turf for athletic

fields shall be prohibited.

SECTION XX. Said section 5 of said chapter 44B, as so appearing, is further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

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

SECTION XX. Said chapter 44B, as so appearing, is hereby amended by striking out section 6 and inserting in place thereof the following section:-

Section 6. In every fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. The legislative body may also make appropriations from the Community Preservation Fund as it deems necessary for costs associated with tax billing software and outside vendors necessary to integrate such software for the first year that a city or town implements the provisions of this chapter; provided, however, that the total of any administrative and operating expense of the community preservation committee and the first year implementation expenses do not exceed 5 per cent of the annual revenues in the Community Preservation Fund.

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

SECTION XX. The second paragraph of section 7 of said chapter 44B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The following monies shall be deposited in the fund: (i) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii) additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b 1/2) of section 3, if applicable; (iii) all funds received from the commonwealth or any other source for such purposes; and (iv) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund.

SECTION XX. Said chapter 44B, as so appearing, is hereby amended by striking out section 10 and inserting in place thereof the following section:-

Section 10. (a) The commissioner of revenue shall annually on or before November 15 disburse monies from the fund established in section 9 to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the city or town has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied. In the event a city or town accepts this act pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to the commissioner by October 30, the maximum additional funds the city or town intends to transfer to the Community Preservation Fund from allowable municipal sources for the following fiscal year. Once certified, the city or town may choose to transfer less than the certified amount during the following

fiscal year.

(b) The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to section 9c by 80 per cent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town and, if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the city or town's equalized property valuation per capita ranking, ranking cities and towns from highest to lowest valuation. The commissioner shall also determine the population of each city or town and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by 2. The dividend is the community preservation raw score for that city or town.

(e) The commissioner shall then order each city or town by community preservation raw score, from the lowest raw score to the highest raw score. This order shall be the community preservation rank for each city or town. If more than 1 city or town has the same community preservation raw score, the city or town with the higher equalized valuation rank shall receive the higher community preservation rank.

(f) After determining the community preservation rank for each city or town in the commonwealth, the commissioner shall divide all cities or towns into deciles according to their community preservation ranking, with approximately the same number of cities or towns in each decile, and with the cities or towns with the highest community preservation rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:

decile 1 140 per cent of the base figure

decile 2 130 per cent of the base figure

decile 3 120 per cent of the base figure

decile 4 110 per cent of the base figure

decile 5 100 per cent of the base figure

decile 6 90 per cent of the base figure

decile 7 80 per cent of the base figure

decile 8 70 per cent of the base figure

decile 9 60 per cent of the base figure

decile 10 50 per cent of the base figure

After assigning each city or town to a decile according to their community preservation rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

(g) Notwithstanding any other provision of this section, the total state contribution for each city or town shall not exceed the actual amount raised by the city or town's surcharge on its real property levy, and if applicable, additional funds committed from allowable municipal sources pursuant to subsection (b1/2) of section 3.

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

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

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

(2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only 1 round of distributions, or in any other equitable manner.

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

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

(a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on said property.

SECTION XX. Subsection (a) of section 16 of said chapter 44B, as so appearing, is hereby amended by inserting after the word "chapter", in line 5, the following words:-

, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b 1/2) of section 3.

SECTION XX. Sections XX to XX (CPA sections) shall apply to all Community Preservation Fund appropriations approved by a city or town's legislative body on or after the effective date of acceptance of chapter 44B of the General Laws in such city or town.

SECTION XX. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall beginning for fiscal year 2013 and in every fiscal year thereafter dispose of the consolidated net surplus in the budgetary funds in the following order to the extent that funds are available: (1) the comptroller shall transfer \$25,000,000 to the Massachusetts Community Preservation Trust Fund, established by section 9 of chapter 44B of the General Laws; and (2) the comptroller shall transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

(b) All transfers pursuant to this section shall be made from the undesignated fund balance in the budgetary funds proportionally from the undesignated fund balances; but no such transfers shall cause a deficit in any of the funds.