

Chapter 149 of the Acts of 2004

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2005 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS.

SECTION 298. (a) This section applies to any town in Barnstable county that has a Cape Cod Open Space Land Acquisition Program established pursuant to chapter 293 of the acts of 1998, and any such town may adopt this section in accordance with the procedures set forth in subsection (b) or (c). The adoption of this section by a town shall constitute the acceptance by the town of sections 3 to 7, inclusive, of chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, and shall result in the town having all powers and rights granted by, and being subject to all duties, obligations and restrictions imposed under, said chapter 44B to the same extent as if the town had adopted said sections 3 to 7, inclusive, of said chapter 44B, except as otherwise provided in this section.

(b) Any such town may adopt this section upon the approval thereof by the town meeting of the town or, in the case of the town of Barnstable, by the town council of the town, and the approval thereof by the voters of a ballot question as set forth in subsection (c).

(c) Upon the approval of this section by the town meeting of a town or, in the case of the town of Barnstable, by the town council of the town in accordance with the provisions of subsection (b) the town clerk or the secretary of state, as applicable, shall place the question of approval of the provisions of this section on the ballot at the next regular municipal election held more than 35 days after such approval or certification, as applicable, or at the next regular state election held more than 60 days after such approval or certification, as applicable, in the form of the following question:

"Shall the Town of _____ adopt section ____ of Chapter ____ of the Acts of 2004, (as approved by the town meeting/council), a summary of which appears below?"

("Acceptance of section of Chapter of the Acts of 2004 means the Community Preservation Act shall effectively replace the Cape Cod Open Space Land Acquisition Program. There shall be no additional excise on real property levied, other than the current 3 per cent levied for the provisions of the Cape Cod Open Space Land Acquisition Program. Acceptance of this section shall allow the community to access state matching funds of up to 100 per cent of the excise on real property currently levied, which was previously unavailable to the town.")

If a majority of the voters voting on said question vote in the affirmative, then the provisions of this section as approved by the town meeting or town council, as applicable, shall take effect in the town, but not otherwise.

(d) Notwithstanding chapter 293 of the acts of 1998 to the contrary, the excise on real property in an amount equal to 3 per cent of the real estate tax levy against said property levied pursuant to section 6 of chapter 293 of the acts of 1998, in connection with the town's Cape Cod Open Space Land Acquisition Program shall terminate at the end of the fiscal year of the town in which the voters of the town vote to approve the adoption of this section pursuant to subsection (c). In the fiscal year of the town following the fiscal year in which the voters of the town vote to approve the adoption of this section, the town shall impose a surcharge on real property in the amount equal to 3 per cent of the real estate tax levy against said property for the purposes of and in accordance with said chapter 44B. Notwithstanding section 16 of said chapter 44B to the contrary, the town may not amend the amount of or revoke such surcharge on real property in accordance with section 16 of said chapter 44B until fiscal year 2020.

(e) On the first day of the fiscal year following the fiscal year in which the voters of a town approve the adoption of this section in accordance with subsection (c), the town shall establish a separate account to be known as the Community Preservation Fund in accordance with and pursuant to section 7 of said chapter 44B. Notwithstanding chapter 293 of the acts of 1998 to the contrary, the town shall simultaneously extinguish its separate account known as the Land Bank Fund established pursuant to section 5 of Chapter 293 of the Acts of 1998. Without further appropriation by the town, the town shall simultaneously transfer all amounts then on deposit in its Land Bank Fund to its Community Preservation Fund, and all investments thereof shall become investments of the Community Preservation Fund. In addition to the amounts so transferred from the town's Land Bank Fund, the town shall thereafter deposit the following amounts into its Community Preservation Fund: (i) all amounts required to be deposited into the fund pursuant to section 7 of said chapter 44B; (ii) all receipts from the excise on real property levied pursuant to section 5 of chapter 293 of the acts of 1998 in any fiscal year prior to the fiscal year in which the Community Preservation Fund of the town is established pursuant to this subsection, and all interest thereon, which is received by the town after the establishment thereof, (iii) all proceeds of bonds or notes issued pursuant to section 7 of chapter 293 of the acts of 1998; and (iv) any other grants, donations or other amounts received by the town for the benefit of, for deposit in or for the purposes of the Land Bank Fund.

(f) Upon the adoption of this section by a vote of the voters of a town in accordance with subsection (c), the town's open space committee established pursuant to section 4 of chapter 293 of the acts of 1998 shall be abolished. Any town, which has so adopted this section, shall establish a community preservation committee by bylaw in accordance with section 5 of said chapter 44B. The community preservation committee shall have the rights and powers, and shall be subject to the duties, obligations and restrictions, set forth in section 5 of said chapter 44B.

(g) All amounts transferred to or deposited in the Community Preservation Fund of a town pursuant to subsection (e) shall be appropriated in every fiscal year in accordance with section 6 of said chapter 44B; provided, however, that any amount appropriated by the town from the Land Bank Fund in accordance with chapter 293 of the acts of 1998 prior to the vote of the voters of the town approving the adoption of this section pursuant to subsection (c) which has not been expended prior to the establishment of the Community Preservation Fund and the termination of the Land Bank Fund pursuant to subsection (e) shall be expended solely for the purpose of such appropriation pursuant to chapter 293 of the acts of 1998, and the vote of the town meeting or, in the case of the town of Barnstable, of the town council therefore. Any such amount expended from the Community Preservation Fund in accordance with a prior appropriation made pursuant to chapter 293 of the acts of 1998 shall not require a further appropriation of the town and the amount and purpose of such an expenditure shall not be taken into account for purposes of determining annual revenues of the Community Preservation Fund and compliance by the town with the minimum spending requirements prescribed in section 6 of said chapter 44B. No appropriation may be made from the Land Bank Fund by any town that adopts the provisions of this section after the date on which the voters of the town vote to approve the adoption of the provisions of this section pursuant to subsection (c). Any town that adopts this section may appropriate amounts from its Community Preservation Fund only after the establishment of such Fund pursuant to subsection (e) and after the establishment of its Community Preservation Committee pursuant to subsection (f).

(h) Any bonds or notes authorized by a town pursuant to section 7 of chapter 293 of the acts of 1998 prior to the vote of the voters of the town approving the adoption of this section pursuant to subsection (c) may be issued by the town pursuant to section 7 of chapter 293 of the acts of 1998 at any time prior to such vote. Notwithstanding section 7 of chapter 293 of the acts of 1998 and section 11 of said chapter 44B to the contrary, a town that has adopted the provisions of this section may pay any bonds and notes issued pursuant to section 7 of chapter 293 of the acts of 1998 from amounts on deposit in its Community Preservation Fund to the same extent as if such bonds or notes were issued pursuant to

section 11 of said chapter 44B regardless of whether such bonds or notes were issued prior to or after the adoption of this section by the town. Any appropriation by a town for the payment of debt service on any such bonds or notes from amounts on deposit in its Community Preservation Fund shall constitute an expenditure for the acquisition, creation or preservation of open space and shall be made in accordance with and subject to the restrictions of section 6 of said chapter 44B; provided, however, that the town meeting or, in the case of the town of Barnstable, the town council may, upon the recommendation of the community preservation committee, appropriate and expend the entire amount needed to pay debt service on any such bonds or notes that were authorized by a vote of the town meeting or the or, in the case of the town of Barnstable, by the town council which was passed on or before June 30, 2005, even if the aggregate amount of such expenditures exceeds 80 per cent of the annual revenues of the town's Community Preservation Fund for historic resources and half of such remaining annual revenues for community housing.

(i) With respect to any town that adopts this section, any real property it acquired or acquires with funds appropriated pursuant to the provisions of chapter 293 of the acts of 1998 shall continue to be subject to the provisions thereof, and any real property it acquires pursuant to said chapter 44B shall be subject to the provisions of said chapter 44B.

(j) Any town that adopts this section may not thereafter independently adopt sections 3 to 7, inclusive, of said chapter 44B in accordance with the provisions thereof unless the town has previously voted to revoke the surcharge on real property as permitted pursuant to subsection (d). This section does not, however, (i) require any town in Barnstable County to seek the adoption thereof, (ii) prevent any such town from continuing to operate its Cape Cod Open Space Land Acquisition Program in accordance with chapter 293 of the acts of 1998, or (iii) prevent any such town from continuing to operate its Cape Cod Open Space Land Acquisition Program and independently adopting sections 3 to 7, inclusive, of said chapter 44B in accordance with the provisions thereof. Notwithstanding said chapter 44B to the contrary, any town that adopts this section after it has independently adopted sections 3 to 7, inclusive, of said chapter 44B shall be subject to said chapter 44B as adopted pursuant to and as modified by this section beginning in the fiscal year of the town following the fiscal year in which the voters of the town vote to approve the adoption of this section pursuant to subsection (c), and the surcharge on real property and the exemptions therefrom adopted pursuant to this section shall at such time replace the surcharge on real property and exemptions therefrom previously adopted by the town in accordance with said chapter 44B.