

HOUSE No. 02788

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Cantwell

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 promote local and regional affordable housing planning.

PETITION OF:

NAME:

James M. Cantwell

DISTRICT/ADDRESS:

4th Plymouth

HOUSE No. 02788

By Mr. Cantwell of Marshfield, a petition (accompanied by bill, House, No. 2788) of Cantwell for legislation to promote local and regional affordable housing planning Joint Committee on Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote local and regional affordable housing planning.

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. Chapter 40B of the General Laws, as appearing in the 2004 Official Edition, is
2 hereby amended by adding the following at the end of the definition of “consistent with local
3 needs” in section 20:

4 “For the purpose of determining whether low or moderate income housing exists which is in
5 excess of ten per cent of a municipality’s housing units reported in the latest decennial census, a
6 municipality’s subsidized housing inventory shall include any such housing that has been
7 allocated pursuant to a housing credit allocation agreement under Section 20(a).”

8 SECTION 2. Chapter 40B of the General Laws, as appearing in the 2004 Official Edition, is
9 hereby amended by adding the following definitions to Section 20:

10 “subsidized housing inventory,” a list or tally of a municipality’s low or moderate income
11 housing units, whether located within the municipality or within another municipality and

12 subject to a Housing Credit Allocation Agreement pursuant to Section 20A of this Chapter. The
13 Department of Housing and Community Development shall maintain an official subsidized
14 housing inventory for each municipality in the Commonwealth. Any person or party aggrieved
15 may challenge the accuracy of the Department's subsidized housing inventory by either filing a
16 petition with the Department of Housing and Community Development or raising such a
17 challenge during a proceeding before the Housing Appeals Committee.

18 SECTION 3. Chapter 40B, Section 20 of the General Laws, as appearing in the 2004 Official
19 Edition, is hereby amended by deleting the definition of "low or moderate income housing," and
20 replacing it with the following:

21 "Low or moderate income housing," any housing subsidized by the federal or state government
22 under any program to assist the construction of low or moderate income housing as defined in
23 the applicable federal or state statute, or any housing subsidized under any municipal or regional
24 housing program created under G.L. c. 44, §55C, G.L. c. 44B, §§1-16 or other law, and that
25 meets the following eligibility criteria: (1) the housing is restricted for a term of at least thirty
26 years for sale to or occupancy by households earning no more 80% of the area median income as
27 defined by the United States Department of Housing and Urban Development (adjusted for
28 household size); (2) housing purchasers or occupants are selected through affirmative, fair
29 marketing practices; and (3) the housing is built or operated by a public agency or a nonprofit or
30 limited dividend organization.

31 SECTION 4. Chapter 40B, Section 20 of the General Laws, as appearing in the 2004 Official
32 Edition, is hereby amended by adding the following definition:

33 “Limited dividend organization,” any entity that agrees to limit its profit in the construction of
34 low or moderate income housing. The profit earned from the construction of low or moderate
35 income housing that is sold shall be limited to twenty percent of the total actual development
36 costs, and for housing that rented, the annual returns on investment shall be limited to ten percent
37 of the actual invested equity in the development. Any profit derived from the sale of a
38 development project shall be deemed profit for purposes of this section. All profit in excess of
39 these limitations shall be paid to the municipality where the project is located for the purpose of
40 building, purchasing, managing, maintaining, rehabilitating or facilitating affordable housing
41 SECTION 5. Chapter 40B of the General Laws, as appearing in the 2004 Official Edition, is
42 hereby amended by adding the following section:

43

44 Section 20(a) – Regional Housing Planning Districts.

45 (1) Through an inter-municipal agreement governed by Section 4A of Chapter 40, two or more
46 municipalities may create a regional housing planning district in which the municipal members
47 are naturally linked by one or more of the following: (i) watersheds, airsheds, wetlands, wildlife
48 migration, or other common environmental interest or interests; (ii) demographic similarities
49 such as employment centers, cultural traditions, or historic events or interests; or (iii) reliance on
50 shared or common public or private infrastructure or services such as highways, mass transit,
51 water and sewer, education, and solid waste management. A regional housing planning district
52 may be a sub-district within an existing regional planning district created pursuant to Sections 1-
53 8 of Chapter 40B, subject to the consent of the applicable district planning commission and all of
54 the members of the regional housing planning district.

56 (2) The governing body of a regional housing planning district, as may be determined by the
57 municipal members of the district through the inter-municipal agreement, shall adopt a regional
58 comprehensive plan that establishes urban growth boundaries that designate areas within the
59 district that are best suited for compact patterns of residential, commercial and industrial land
60 uses. The regional comprehensive plan shall inventory all land within the urban growth
61 boundaries, project future land use needs over the next 20 years, designate sufficient land within
62 the urban growth boundaries to meet those needs, and develop zoning and environmental
63 regulations for adoption by the member municipalities to effectuate the regional comprehensive
64 plan. The regional comprehensive plan, through the designation of land for residential uses and
65 the creation of development zoning bylaws and regulations to govern said land, shall permit the
66 construction, as of right, of a sufficient quantity of low or moderate income housing units for
67 each member municipality to meet the 10% housing unit minimum threshold set forth in Section
68 20. Zoning bylaws and regulations adopted pursuant to a regional comprehensive plan may
69 provide for construction of said housing to be permitted subject to a site plan review process.
70 Regional housing planning districts shall adopt new or revised regional comprehensive plans that
71 comply with this section every fifteen years. A municipality that elects not to enter into a
72 regional housing planning district agreement may adopt its own municipal comprehensive
73 housing plan. To be eligible for the benefits of this Section 20a, a municipal comprehensive
74 housing plan shall conform to the requirements of this sub-section (2).

75 (3) In municipalities that have adopted urban growth boundary development zoning bylaws set
76 forth in regional or municipal comprehensive plans that accommodate the as of right creation of
77 a sufficient quantity of low or moderate income units to satisfy the 10% housing unit minimum

78 threshold, decisions made by the local board of appeals under Section 21 of Chapter 40B shall be
79 deemed consistent with local needs for a period of two years from the effective date of said
80 zoning bylaws, which shall be renewed for additional two year terms if during the preceding two
81 years there has been an increase in the number of low or moderate income housing units in the
82 municipality equal to at least 1% of the municipality's total number of housing units as
83 determined by the last decennial census. New housing that is added to a municipality's
84 subsidized housing inventory may include housing created within another municipality that is a
85 member of the same regional housing planning district, and which is subject to a housing credit
86 allocation agreement as provided under subsection (4).

87 (4) Municipalities that are members of a regional housing planning district that has adopted a
88 regional comprehensive plan may, by agreement, allocate new or substantially-rehabilitated low
89 or moderate income housing created in one municipality for inclusion on another member's
90 subsidized housing inventory for purposes of Section 20, provided that: (a) the new or
91 substantially-rehabilitated housing is consistent with the regional comprehensive plan; (b) the
92 housing is not included on more than one municipality's subsidized housing inventory; (c) the
93 allocation of housing is made pursuant to housing credit allocation agreement between the
94 municipalities; and (d) no more than fifty percent of the housing included within a municipality's
95 subsidized housing inventory shall be housing allocated from another municipality.

96 SECTION 6. The General Laws shall be amended by adding the following Chapter 44C, entitled
97 "Municipal Initiative Housing Trust Fund."

98 CHAPTER 44C – MUNICIPAL INITIATIVE HOUSING TRUST FUND

99 SECTION 1. There shall be established a separate fund, to be known as the Municipal Initiative
100 Housing Trust Fund, which shall consist of revenues from the following sources:

101 (a) from a surcharge applied to the fees of the registers of deeds to be paid when a document or
102 instrument is recorded. The surcharge shall be \$25 per instrument, except for deeds which shall
103 be subject to surcharge equal to \$.50 per thousand dollars stated as consideration in the deed;
104 provided, however, that if the document or instrument to be filed includes multiple references to
105 a document or instrument intending or attempting to assign, discharge, release, partially release,
106 subordinate or notice any other document or instrument, each reference shall be separately
107 indexed and separately assessed an additional \$25 surcharge. No surcharge shall apply to a
108 declaration of homestead.

109 (b) from a surcharge applied to the fees of the assistant recorder, except as otherwise provided, to
110 be paid when the instrument is left for registering, filing or entering with respect to registered
111 land. The surcharge shall be \$25 per instrument, except for deeds which shall be subject to
112 surcharge equal to \$.50 per thousand dollars stated as consideration in the deed. No surcharge
113 shall apply to a declaration of homestead. No surcharge shall apply to the fees charged for
114 additional lots shown on plans, for indexing instruments recorded while a petition for registering
115 is pending, for additional certificates of sewer assessments, for old age assistance liens, for
116 duplicates and for photocopies;

117 (c) from public and private sources as gifts, grants and donations to further municipal housing
118 programs; and

119 (d) all other monies credited to or transferred to from any other fund or source pursuant to law.

120 SECTION 2. The state treasurer shall deposit the fund in accordance with the provisions of
121 section 4 in such manner as will secure the highest interest rate available consistent with the
122 safety of the fund and with the requirement that all amounts on deposit be available for
123 withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings
124 shall be deposited into the fund. The fund shall be expended solely for the administration and
125 implementation of this chapter. Any unexpended balances shall be redeposited for future use
126 consistent with the provisions of this chapter.

127 SECTION 3. The state treasurer shall make all disbursements and expenditures from the fund
128 without further appropriation, as directed by the director of the Department of Housing and
129 Community Development in accordance with Section 4. The director shall report by source all
130 amounts credited to said fund and all expenditures from said fund. The director shall assign
131 personnel of the agency as it may need to administer and manage the fund disbursements and any
132 expense incurred by the agency shall be deemed an operating and administrative expense of the
133 program. The operating and administrative expenses shall not exceed ten per cent of the annual
134 total revenue received under the provisions of said section 4. All monies deposited into the fund
135 shall be expended exclusively for the purposes set forth in this chapter.

136 SECTION 4. (a) The director of the Department of Housing and Community Development shall
137 award disbursements of monies from the fund for three purposes: (i) to support the creation of
138 regional housing planning districts established under section 20(a) of chapter 40B; (ii) to support
139 pre-development feasibility analysis and planning associated with the creation or substantial
140 rehabilitation of new low or moderate income housing units that is proposed by regional housing
141 planning districts and/or municipalities in accordance and consistent with a regional or municipal
142 comprehensive plan adopted pursuant to said section 20(a), as provided by subsection (b) of this

143 section; and (iii) to subsidize the construction of low or moderate income housing as provided
144 under subsection (c) of this section.

145 (b) Disbursements to support pre-development feasibility analysis and planning associated with
146 the creation or substantial rehabilitation of new low or moderate income housing units shall be
147 limited to housing proposals that create or substantially rehabilitate at least eight housing units,
148 of which at least 50% must be set aside for households earning no greater than 80% of the area
149 median income as determined by the United States Department of Housing and Urban
150 Development. The director shall determine the amount of each award based on the reasonably-
151 anticipated pre-development costs, in the director's best judgment and reasonable discretion.
152 The director shall award disbursements equal to the full amount of the reasonably-anticipated
153 predevelopment costs of each proposal unless the applicant requests a smaller disbursement. The
154 director shall deny disbursements requests only under the following circumstances: (i) there are
155 not sufficient monies in the fund; (ii) the proposal does not meet the conditions of this section; or
156 (iii) the director determines that the proposal is not feasible or financially viable.

157 (c) On a biannual basis the director of the Department of Housing and Community Development
158 shall solicit applications for disbursement of monies from the fund from regional housing
159 planning districts and municipalities that are members of such districts for the disbursement of
160 monies from the fund to subsidize the construction of low or moderate income housing.

161 Disbursements under this subsection (b) shall be limited to undisbursed monies from the
162 previous fiscal year, and the aggregate amount of such disbursements in any given year shall not
163 exceed 50% of the undisbursed funds from the previous fiscal year.

164 (d) Disbursement of monies under this section shall only be made for proposals in municipalities
165 that have not attained the 10% housing unit minimum threshold under section 20 of chapter 40B,
166 provided however that monies may be disbursed for proposals located in municipalities that have
167 attained the 10% housing unit minimum threshold if the credit for said units will be allocated to a
168 municipality that has not attained said threshold under a legally-binding housing credit allocation
169 agreement under section 20(a)(4) of chapter 40B.

170 (e) In the event that there are insufficient monies in the fund to disburse to meet all of the
171 requests for monies under subsection (a), priority in the disbursement of funds shall be given to
172 municipalities whose aggregate real property value, per capita, is less than the median real
173 property value per capita for the Commonwealth's 351 municipalities.

174 (f) After distributing the trust fund in accordance with this section, the director may keep any
175 remaining funds in the trust for distribution in the following year. No expenditure from said fund
176 shall cause said fund to be in deficiency at the close of a fiscal year.

177 SECTION 7 – Chapter 40B Integrity Study Commission.

178 (a) There is hereby established in, but not of, the Department of Housing and Community
179 Development a Chapter 40B Integrity Study Commission to consist of six members of whom one
180 member shall be the Undersecretary of said Department, and five members shall be appointed by
181 the State Auditor. Of the five members appointed by the State Auditor, (i) one shall be an
182 elected member of a board of selectmen or a member of a city or town council of a municipality
183 having a population of 15,000 persons or less; (ii) one shall be an attorney who has experience
184 in, and knowledge of, the permitting and construction of low or moderate income housing under
185 the Act; (iii) one shall be an attorney who has experience representing municipalities in the

186 permitting of low or moderate income housing under the Act; (iv) one shall be a certified public
187 accountant who has experience in, and knowledge of, the permitting and construction of low or
188 moderate income housing under the Act; and (v) one who shall be selected by the Massachusetts
189 Municipal Association. The members shall serve for a term of three years, or until their duties
190 under this Act have been completed as may be determined by the State Auditor. The State
191 Auditor shall designate the chairman of the Board. The chairman shall appoint a vice-chair and
192 any other officers as deemed necessary. The term of appointment shall be three years, or until
193 the duties of the Commission have been completed as may be determined by the State Auditor.
194 The members shall serve without compensation.

195 (b) It shall be the duty of the Commission, nine months after the confirmation of the last member
196 appointed to the Commission, to: (i) determine whether and to what extent private housing
197 developers are earning profits from the construction of low or moderate income housing under
198 Sections 20-23 of Chapter 40B in excess of the limits set by the applicable public subsidy
199 program; (ii) to determine whether and to what extent oversight and auditing mechanisms within
200 said subsidy programs and within the Department of Housing and Community Development are
201 effective in prevent fraud and abuse in the accounting and reporting of profits under said
202 Sections 20-23; and (iii) to recommend legislative and regulatory actions to address fraud and/or
203 profiteering under said Sections 20-23.