

**HOUSE . . . . . No. 01254**

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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 making chapter 40B, so called, more responsive to the Commonwealth's cities and towns..

PETITION OF:

NAME:

*James M. Cantwell*

DISTRICT/ADDRESS:

*4th Plymouth*

# HOUSE . . . . . No. 01254

By Mr. James M. Cantwell of Marshfield, petition (accompanied by bill, House, No. 01254) of James M. Cantwell relative to providing that low and moderate income housing be more responsive to municipalities. Joint Committee on Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1186 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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An Act making chapter 40B, so called, more responsive to the Commonwealth's cities and towns..

*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 20 of chapter 40B of the General Laws, as appearing in the 2000 Official  
2 Edition, is hereby amended by inserting before the definition of “Low or moderate income  
3 housing”, the following definition:—

4 “Local Housing Authority”, any housing authority within a city or town as provided under  
5 chapter 121B of the General Laws.

6 SECTION 2. Said section 20 of said chapter 40B, as so appearing, is hereby amended by striking  
7 out, in line 6, the words “or state” and inserting in place thereof the following words:— , state or  
8 local.

9 SECTION 3. The definition of “Low or moderate income housing” in said section 20 of said  
10 chapter 40B is hereby amended by adding the following sentence: — Such program shall not  
11 include any funding by the Federal Home Loan Bank.

12 SECTION 4. The definition of “Low or moderate income housing” in said section 20 of said  
13 chapter 40B, as so appearing, is hereby amended by adding the following 2 paragraphs:—

14 In calculating a city or town’s 80 per cent threshold of low or moderate income housing stock,  
15 the department of housing and community development shall count all rental units and all units  
16 being offered for sale at market rate constructed in accordance with this chapter.

17 The sale or rental of low or moderate income housing shall be calculated at 40 per cent of the  
18 income of those persons whose income is 80 per cent or less of the area median income, as  
19 defined by the United States Department of Housing and Urban Development.

20 SECTION 5. The definition of “Uneconomic” in said section 20 of said chapter 40B, as so  
21 appearing, is hereby amended by adding the following paragraph:—

22 The profit realized by any developer of a comprehensive permit project shall not exceed 10 per  
23 cent. In calculating the profit, the baseline acquisition cost shall be limited to either the last  
24 purchase price of a developer-owned parcel with reasonable carrying costs or the fair market  
25 value of a property that is under a purchase and sale agreement.

26 SECTION 6. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by  
27 striking out, in line 31, the words “board of zoning appeals” and inserting in place thereof the  
28 following words: — planning board.

29 SECTION 7. The definition of “Consistent with local needs” in said section 20 of said chapter  
30 40B, as so appearing, is hereby further amended by inserting after the first sentence the  
31 following 5 sentences:—

32 The applicant for a comprehensive permit shall be required to list any and all waivers to local  
33 regulations, demonstrate the necessity for each waiver, the specific portion of the property to  
34 which each waiver applies and how each waiver is required to sustain the economic viability of  
35 the development proposal. Local wetland by-laws and board of health regulations may be waived  
36 by the planning board only if they apply to dimensional criteria such as setbacks, lot areas and  
37 buffer zones and only if the applicant can demonstrate that such waivers will not adversely affect  
38 the environment. The board may choose not to waive municipal sewer regulations or bylaws.  
39 The board shall not waive any regulation that will prevent the development of environmentally  
40 or physically unsuitable land. The applicant shall be required to establish that the subject  
41 property could physically support a conventional development of at least 35 per cent of the  
42 number of units that are proposed under the comprehensive permit process.

43 SECTION 8. Said section 20 of said chapter 40B, as so appearing, is hereby further amended by  
44 striking out, in line 33 the word “ten” and inserting in place thereof the following figure:— 8.

45 SECTION 9. The definition of “Consistent with local needs” in said section 20 of said chapter  
46 40B, as so appearing, is hereby amended by adding the following paragraph:—

47 Notwithstanding the provisions of any law or regulation to the contrary, in any municipality  
48 where at least 40 per cent of the housing units for sale or rent can be occupied through  
49 conventional market based financing by households whose income does not exceed 80 per cent  
50 of the area median income, as defined by the United States Department of Housing and Urban

51 Development, this chapter shall have no force or effect and shall not be allowed to be used to  
52 achieve any site approval pursuant to this chapter.

53 SECTION 10. Said chapter 40B is hereby further amended by inserting after section 20 the  
54 following section:—

55 Section 20A. All low and moderate income housing units included in a comprehensive permit  
56 shall have a use restriction in perpetuity and such restriction shall be recorded in the registry of  
57 deeds for the district in which the land lies or the registry district of the land court.

58 SECTION 11. Section 21 of said chapter 40B, as appearing in the 2000 Official Edition, is  
59 hereby amended by striking out, in lines 3 and 4, the words “board of appeals, established under  
60 section twelve of chapter forty A” and inserting in place thereof the following words:—

61 planning board established under section 70 of chapter 41.

62 SECTION 12. Said section 21 of said chapter 40B, as so appearing, is hereby further amended,  
63 by striking out, in lines 5, 9, 17, 20 and 24 the words “ board of appeals” and inserting in place  
64 thereof, in each instance, the following words:—

65 planning board.

66 SECTION 13. Section 21 of said chapter 40B, as so appearing, is hereby further amended by  
67 inserting, after the second sentence the following sentence:—

68 The planning board shall be entitled to charge the applicant a reasonable fee for the cost of  
69 reviewing a comprehensive permit application in accordance with chapter 44, section 53G.

70 SECTION 14. Said section 21 of said chapter 40B, as so appearing, is hereby further amended  
71 by inserting after the third sentence, the following sentence:—

72 The planning board shall have the power to attach to said permit or approval the condition that a  
73 certain percentage of handicapped accessible units shall be built within the comprehensive  
74 permit development.

75 SECTION 15. Said section 21 of said chapter 40B, as so appearing, is hereby further amended  
76 by inserting after the fourth sentence, the following sentence:—

77 The planning board shall receive and consider evidence that the density or pace of a proposed  
78 development will unduly burden a city or town's ability to provide adequate services, including,  
79 but not limited to schools, water and sewer and other municipal services.

80 SECTION 16. Said section 21 of said chapter 40B, as so appearing, is hereby further amended  
81 by adding the following sentence:—

82 No application for a comprehensive permit shall be filed while a pending comprehensive permit  
83 application for development in the same community is under review by the planning board or the  
84 housing appeals committee.

85 SECTION 17. Said chapter 40B is hereby further amended by inserting after section 21, the  
86 following section:—

87 Section 21A. If the planning board of a city or town develops an affordable housing plan that  
88 insures that a minimum of 25 per cent of all new housing units constructed in the city or town are  
89 affordable, including, but not limited to inclusionary, cluster and mixed use zoning provisions,  
90 and the proposal is approved by the community's legislative body, the community shall be

91 exempt from the provisions of this chapter. If the community does not create a plan or the plan  
92 fails to make 25 per cent of its new housing construction affordable, the community shall not be  
93 exempt from this chapter.

94 SECTION 18. Section 22 of said chapter 40B, as appearing in the 2000 Official Edition, is  
95 hereby amended by striking out, in lines 7 and 10, the words “board of appeals” and inserting in  
96 place thereof, in each instance, the following words:— planning board.

97 SECTION 19. Section 23 of said chapter 40B, as appearing in the 2000 Official Edition, is  
98 hereby amended by striking out, in lines 4, 9, 23 and 30 the words, “board of appeals” and  
99 inserting in place thereof, in each instance, the following words:— planning board.

100 SECTION 20. Said Section 23 of said chapter 40B, as so appearing, is hereby further amended  
101 by inserting after the first sentence the following sentence: — The housing appeals committee  
102 shall consider evidence from a city or town that the density or pace of a proposed development  
103 will unduly burden that city or town’s ability to provide adequate services, including, but not  
104 limited to schools, water and sewer and other municipal services.

105 SECTION 21. Said chapter 40B is hereby further amended by inserting after section 23 the  
106 following sections:—

107 Section 23A. The public agency or limited dividend or nonprofit organization proposing to build  
108 low or moderate income housing shall be required to meet with the local housing authority prior  
109 to approval by the planning board. The developer shall also pay any and all fees to the local  
110 housing authority necessary for the administration of the rental or sale of the affordable units.

111 The local housing authority shall administer the process through which affordable housing units  
112 in developments are rented or sold. The authority shall use its existing waiting lists to determine  
113 which local residents are eligible for the affordable units. In making the determination of  
114 eligibility, the authority must require a criminal offender records information check of all  
115 applicants and an annual certification of income. Those who are eligible for affordable housing  
116 shall submit to an annual recertification of income by the local housing authority.

117 Section 23B. The department of housing and community development shall promulgate  
118 regulations to implement these sections.