SENATE DOCKET, NO. 82 FILED ON: 1/14/2011

SENATE . . . . . No. 1841

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. 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:

An Act to sustain community preservation..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	☐ *[District]* ☐
Stephen Kulik	*1st Franklin*
Linda Campbell	*15th Essex*
Rhonda Nyman	*5th Plymouth*
Angelo J. Puppolo, Jr.	*12th Hampden*
Cory Atkins	*14th Middlesex*
Jennifer E. Benson	*37th Middlesex*
William N. Brownsberger	☐ *[District]* ☐
Harriette L. Chandler	☐ *[District]* ☐
Cheryl A. Coakley-Rivera	*10th Hampden*
Kenneth J. Donnelly	☐ *[District]*

	☐
Lori A. Ehrlich	*8th Essex*
James B. Eldridge	☐ *[District]* ☐
Linda Dorcena Forry	*12th Suffolk*
Michael R. Knapik	☐ *[District]* ☐
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Michael O. Moore	☐ *[District]* ☐
Richard T. Moore	☐ *[District]* ☐
Michael J. Rodrigues	☐ *[District]* ☐
Stanley C. Rosenberg	*Hampshire and Franklin*
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
Frank I. Smizik	*15th Norfolk*
James E. Timilty	☐ *[District]* ☐
Brian M. Ashe	*2nd Hampden*
Carlo Basile	*1st Suffolk*
Nicholas A. Boldyga	*3rd Hampden*
Gale D. Candaras	☐ *[District]* ☐
Thomas P. Conroy	*13th Middlesex*
Michael A. Costello	*1st Essex*
Angelo L. D'Emilia	*8th Plymouth*
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Eileen M. Donoghue	☐ *[District]* ☐
Benjamin B. Downing	*Berkshire, Hampshire, and Franklin*

Carolyn C. Dykema	*8th Middlesex*
Susan C. Fargo	☐ *[District]* ☐
Barry R. Finegold	☐ *[District]* ☐
Gloria L. Fox	*7th Suffolk*
Sean Garballey	*23rd Middlesex*
Sheila C. Harrington	*1st Middlesex*
Robert L. Hedlund	☐ *[District]* ☐
Kevin G. Honan	*17th Suffolk*
Steven S. Howitt	*4th Bristol*
Patricia D. Jehlen	☐ *[District]* ☐
Bradley H. Jones, Jr.	*20th Middlesex*
Louis L. Kafka	*8th Norfolk*
John F. Keenan	☐ *[District]* ☐
Thomas P. Kennedy	☐ *[District]* ☐
Kay Khan	*11th Middlesex*
Thomas M. McGee	*Third Essex and Middlesex*
Mark C. Montigny	☐ *[District]* ☐
Alice Hanlon Peisch	*14th Norfolk*
Elizabeth A. Poirier	*14th Bristol*
Todd M. Smola	*1st Hampden*
Christopher N. Speranzo	*3rd Berkshire*
Karen E. Spilka	☐ *[District]* ☐
Ellen Story	*3rd Hampshire*

Cleon H. Turner	*1st Barnstable*
Chris Walsh	*6th Middlesex*
Martha M. Walz	*8th Suffolk*
James T. Welch	☐ *[District]* ☐
Daniel A. Wolf	☐ *[District]* ☐
Michael J. Finn	*6th Hampden*

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SENATE . . . . . No. 1841

By Ms. Creem, petition (accompanied by bill, Senate, No. 1841) of Wolf, Welch, Walz and other members of the General Court for legislation to sustain community preservation [Joint Committee on Community Development and Small Businesses].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *90* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to sustain community preservation..

Whereas, The deferred operation of this act would tend to defeat its purpose, which is 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:

SECTION 1. Section 2 of chapter 44B, as appearing in the 2008 Official Edition, is hereby amended by removing the definition of "Rehabilitation" and "Preservation" and "Historic Resources" and inserting the following paragraphs:

"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

12 shall include the replacement of playground equipment and other capital improvements to the
13 land or the facilities thereon which make the land or the related facilities more functional for the
14 related recreational use.

15 "Preservation," protection of personal or real property from injury, harm or destruction.

16 "Historic Resources," a building, structure, vessel, real property, document or artifact that
17 is listed on the state register of historic places or has been determined by the local historic
18 preservation commission to be significant in the history, archaeology, architecture or culture of a
19 city or town.

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

24 "Maintenance", incidental repairs which neither materially add to the value of the
25 property nor appreciably prolong the property's life, but keeps the property in a condition of
26 fitness, efficiency, and/or readiness.

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

32 SECTION 2. Section 3 of chapter 44B is hereby amended by adding after paragraph (b)
33 the following new paragraph:-

34 (b 1/2) As an alternative to subsection (b) of section 3, the legislative body may vote to
35 accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per
36 cent of the real estate tax levy against real property, and making an additional commitment of
37 funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real
38 property, provided that additional funds so committed shall come from another source or sources
39 of municipal revenue, including but not limited to hotel/motel excise taxes pursuant to chapter
40 64G of the general laws, linkage fee and inclusionary zoning payments, however authorized, the
41 sale of municipal property pursuant to section 3 of chapter 40 of the general laws, parking fines
42 and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90 of the general laws,
43 existing dedicated housing, open space and historic preservation funds, however authorized, and
44 provided further that additional funds so committed shall not include any federal funds or funds
45 from private sources, provided that inclusionary zoning payments and linkage fees shall be
46 considered public funds for the purposes of this chapter. The total funds committed to the

47 Community Preservation Act under this subsection shall not exceed 3 per cent of the real estate
48 tax levy against real property, less exemptions adopted.

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

52 SECTION 3. Section 3 of chapter 44B is hereby amended by inserting after paragraph (e)
53 (3) the following new paragraph:-

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

56 SECTION 4. Section 5 of chapter 44B is hereby amended by adding to the following
57 phrase at the end of the first sentence of paragraph (b)(1):- ", including the consideration of
58 regional projects for community preservation."

59 SECTION 5. Section 5 of chapter 44B is further amended by striking paragraph (b)(2) in
60 its entirety and inserting in place thereof the following:-

61 (2) The community preservation committee shall make recommendations periodically
62 throughout the year, or as a single yearly recommendation to the legislative body for the
63 acquisition, creation and preservation of open space; for the acquisition, preservation,
64 rehabilitation and restoration of historic resources; for the acquisition, creation, preservation,
65 rehabilitation and restoration of land for recreational use; for the acquisition, creation,
66 preservation and support of community housing; and for the rehabilitation or restoration of open
67 space and community housing that is acquired or created as provided in this section. With respect
68 to community housing, the community preservation committee shall recommend, wherever
69 possible, the reuse of existing buildings or construction of new buildings on previously
70 developed sites. With respect to recreational use, the acquisition of artificial turf for athletic
71 fields shall be prohibited.

72 SECTION 6. Section 5 of chapter 44B is further amended by striking paragraph (d) and
73 inserting in place thereof the following:-

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

81 SECTION 7. Section 6 of chapter 44B is hereby amended by striking it in its entirety and
82 inserting in place thereof the following:-

83 Section 6. In every fiscal year and upon the recommendation of the community
84 preservation committee, the legislative body shall spend, or set aside for later spending, not less
85 than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not
86 less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of
87 the annual revenues for community housing. In each fiscal year, the legislative body shall make
88 such appropriations from the Community Preservation Fund as it deems necessary for the
89 administrative and operating expenses of the community preservation committee, but the
90 appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation
91 Fund. The legislative body may also make such appropriations from the Community
92 Preservation Fund as it deems necessary for costs associated with tax billing software and
93 outside vendors necessary to integrate said software during a municipality's first year
94 implementation of the Act, provided that the total of any administrative and operating expense of
95 the Community Preservation Committee and the first year implementation expenses do not
96 exceed five per cent of the annual revenues in the Community Preservation Fund.

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

102 SECTION 8. The second paragraph of section 7 of chapter 44B is amended by striking
103 the first sentence and inserting in place thereof the following:-

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

110 SECTION 9. Section 8 of chapter 44B is hereby amended by striking it in its entirety and
111 inserting in place thereof the following:-

112 Section 8. (a) The fees of the registers of deeds, except as otherwise provided, to be paid
113 when the instrument is left for recording, filing or deposit shall be subject to a surcharge of $20.
114 The fees for so recording, filing or depositing a municipal lien certificate shall be subject to a
115 surcharge of $10. The surcharges shall be imposed for the purposes of community preservation.
116 No surcharge shall apply to a declaration of homestead under chapter 188 or to the filing of a
117 third mortgage or fourth mortgage extended by any public agency or quasi public agency,

118 including but not limited to a Commonwealth municipality or the Massachusetts Housing
119 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,
120 abstract cards, additional square feet for the filing and recording of plans or for additional or
121 required marginal references.

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

132 (c) On October 1st of 2011 and every two years thereafter, the commissioner of revenue
133 shall determine if the Massachusetts Community Preservation Trust Fund balance is sufficient to
134 support a 75 per cent first round match distribution pursuant to section 10 for all cities and towns
135 that have accepted sections 3 to 7 inclusive. In the event that the Community Preservation Trust
136 Fund balance is insufficient to support a 75 per cent first round match distribution, the fees of the
137 registers of deeds and fees of the assistant recorder to be paid when the instrument is left for
138 recording, filing or deposit and the fee for so recording, filing or depositing a municipal lien
139 certificate shall be subject to a surcharge to be determined by the commissioner of the
140 department of revenue necessary to support, by the commissioner's best reasonable estimate, a 75
141 per cent first round match, with each fee rounded to the nearest dollar. Under no circumstances
142 shall each fee surcharge for the purposes of community preservation, paid to the register of deeds
143 or assistant recorder when the instrument is left for recording, filing or deposit, be greater than
144 $50. Under no circumstances shall each fee surcharge for the purposes of community
145 preservation, paid to the register of deeds or assistant recorder for so recording, filing or
146 depositing a municipal lien certificate, be greater than $25. In the event that these maximum fees
147 are reached and they are insufficient to support a 75 per cent first round match distribution
148 pursuant to section 10, the Community Preservation Trust Fund match distribution shall be less
149 than 75 per cent. The surcharges shall be imposed for the purposes of community preservation.
150 No community preservation surcharges shall apply to a declaration of homestead under chapter
151 188 to the filing of a third mortgage or fourth mortgage extended by any public agency,
152 including but not limited to a Commonwealth municipality or the Massachusetts Housing
153 Partnership. No surcharge shall apply to the fees charged for additional pages, photostatic copies,
154 abstract cards, additional square feet for the filing and recording of plans or for additional or
155 required marginal references.

156 (d) The commissioner of revenue shall certify the fees pursuant to this section on a
157 biannual basis. Any fee adjustment determined by the commissioner shall take place on the first
158 day of the fiscal year following the biannual certification. The commissioner of revenue shall
159 notify the registers of deeds, the assistant recorders, and the joint committee on revenue of the
160 change at least one-hundred and twenty days prior to any fee adjustment.

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

163 SECTION 10. Paragraph (c) of section 9 of chapter 44B is hereby amended by striking
164 said paragraph and inserting in place therefore the following:-

165 (c) The state treasurer shall make all disbursements and expenditures from the fund
166 without further appropriation, as directed by the commissioner of revenue in accordance with
167 said section 10. The department of revenue shall report by source all amounts credited to said
168 fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of
169 the department as it may need to administer and manage the fund disbursements and any expense
170 incurred by the department for such purposes and any expense incurred by the registers of deeds
171 and the assistant recorder to administer and collect the surcharges pursuant to section 8 shall be
172 deemed an operating and administrative expense of the program. The commissioner of revenue
173 shall annually on October 15th direct the state treasurer to disburse an amount not to exceed one-
174 half of one per cent of the annual total revenue received in the preceding fiscal year from a
175 register of deeds or an assistant recorder pursuant to the provisions of section 8 to such register
176 of deeds or assistant recorder to pay operating and administrative expenses of the program
177 certified to the commissioner by the register of deeds or assistant recorder, and to disburse an
178 amount not to exceed 5 per cent of the annual total revenue received by the state treasurer in the
179 preceding fiscal year under the provisions of said section 8 to the department of revenue to pay
180 total operating and administrative expenses of the program.

181 SECTION 11. Section 10 of chapter 44B is amended by striking it in its entirety and
182 inserting in place thereof the following:-

183 Section 10. (a) The commissioner of revenue shall annually on October 15 disburse
184 monies from the fund established in section 9 to cities and towns that have accepted sections 3 to
185 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the
186 commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive.
187 The municipal tax collecting authority shall certify to the commissioner the amount the
188 municipality has raised through June 30 by imposing a surcharge on its real property levy and
189 shall certify the percentage of the surcharge applied. In the event a municipality accepts this act
190 pursuant to subsection (b 1/2) of section 3, the municipal tax collecting authority shall certify to
191 the commissioner by October 30th, the maximum additional funds the municipality intends to
192 transfer to the Community Preservation Fund from allowable municipal sources for the following

193 fiscal year. Once certified, the municipality may choose to transfer less than the certified amount
194 during the following fiscal year.

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

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

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

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

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

228 decile 1 140 per cent of the base figure

229 decile 2 130 per cent of the base figure

230 decile 3 120 per cent of the base figure

231 decile 4 110 per cent of the base figure

232 decile 5 100 per cent of the base figure

233 decile 6 90 per cent of the base figure

234 decile 7 80 per cent of the base figure

235 decile 8 70 per cent of the base figure

236 decile 9 60 per cent of the base figure

237 decile 10 50 per cent of the base figure

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

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

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

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

257 (1) Only those cities and towns that adopt the maximum surcharge pursuant to
258 subsection (b) of section (3) and those cities and towns that adopt the maximum surcharge and
259 additional funds committed from allowable municipal sources such that the total funds are the
260 equivalent of 3 per cent of the real estate tax levy against real property pursuant to subsection (b

261 1/2) of section 3 of this chapter shall be eligible to receive additional state monies through the
262 equity and surplus distributions.

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

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

269 SECTION 12. Section 12 of chapter 44B is amended by striking paragraph (a) and
270 inserting in place thereof the following:-

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

280 SECTION 13. Section 16 of chapter 44B is hereby amended by striking paragraph (a)
281 and inserting in place thereof the following:-

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

287 SECTION 14. Notwithstanding any general or special law to the contrary, this Act shall
288 apply to all Community Preservation Fund appropriations approved by a city or town's
289 legislative body on or after the effective date of acceptance of the Community Preservation Act
290 in such city or town.