SENATE DOCKET, NO. 353 FILED ON: 1/19/2011

SENATE . . . . . No. 608

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 promoting accessible housing for persons with disabilities..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	☐ *[District]* ☐
Susan C. Fargo	☐ *[District]* ☐
Christine E. Canavan	*10th Plymouth*
Harriette L. Chandler	☐ *[District]* ☐
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Anne M. Gobi	*5th Worcester*
Patricia D. Jehlen	☐ *[District]* ☐
Joyce A. Spiliotis	*12th Essex*
Thomas P. Conroy	*13th Middlesex*
Kay Khan	*11th Middlesex*

Angelo J. Puppolo, Jr.	*12th Hampden*

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SENATE . . . . . No. 608

By Mr. Moore, petition (accompanied by bill, Senate, No. 608) of Fargo, Spiliotis, Puppolo and other members of the General Court for legislation to promote accessible housing for persons with disabilities [Joint Committee on Housing].

The Commonwealth of Massachusetts

An Act promoting accessible housing for persons with disabilities..

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to increase accessible affordable housing for people with disabilities, 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. To provide for a capital outlay program to support housing production and modification for persons with disabilities, elders, homeless individuals and families, and low and moderate income citizens of the commonwealth, the sums set forth for the several purposes and subject to the conditions specified in this act, are hereby made available subject to the laws regulating the disbursement of public funds.

7004-0029.. For state financial assistance in the form of loans for the development of community-based housing for individuals with mental illness and intellectual disabilities; provided, that the loan program shall be administered by the department of housing and community development, hereinafter referred to in this item as the department, through contracts with the Massachusetts Development Finance Agency established in chapter 23G of the General Laws, the Community Economic Development Assistance Corporation established in chapter 40H of the General Laws, operating agencies established pursuant to chapter 121B of the General Laws and the Massachusetts Housing Finance Agency established in chapter 708 of the acts of 1966; provided further, that those agencies may develop or finance community-based housing, or may enter into subcontracts with nonprofit organizations established pursuant to chapter 180 of the General Laws or organizations in which such nonprofit corporations have a controlling financial or managerial interest or for-profit organizations; provided, however, that preference for the subcontracts shall be given to nonprofit organizations; provided further, that the department shall consider a balanced geographic plan for such community-based housing when issuing the loans; provided further, that the department shall consider development of a

21 balanced range of housing models by prioritizing funds for integrated housing as defined by the
22 appropriate housing and service agencies including, but not limited to, the department of housing
23 and community development, the Massachusetts rehabilitation commission, the department of
24 mental health and the department of developmental services, in consultation with relevant and
25 interested clients, their families, advocates and other parties as necessary; provided further, that
26 loans issued pursuant to this item shall: (1) not exceed 50 per cent of the financing of the total
27 development costs; (2) be issued only when a contract or agreement for the use of the property
28 for such housing provides for repayment to the commonwealth at the time of disposition of the
29 property in an amount equal to the commonwealth's proportional contribution from the Facilities
30 Consolidation Fund to the cost of the development through payments made by the state agency
31 making the contract; (3) only be issued when a contract or agreement for the use of the property
32 for the purposes of such housing provides for the recording of a deed restriction in the registry of
33 deeds or the registry district of the land court of the county in which the real property is located,
34 for the benefit of the departments, running with the land, that the land be used to provide
35 community-based housing for eligible individuals as determined by the department of mental
36 health and the department of developmental services; provided, that the property shall not be
37 released from such restriction until the balance of the principal and interest for the loan has been
38 repaid in full or until a mortgage foreclosure deed has been recorded; (4) be issued for a term not
39 to exceed 30 years during which time repayment may be deferred by the loan issuing authority
40 unless, at the end of any fiscal year, cash collections from all sources in connection with a
41 community-based housing project, except for contributions, donations or grant moneys, exceed
42 105 per cent of cash expenditures on behalf of the project, including debt service, operating
43 expenses and capital reserves, in which event such excess cash shall be paid to the
44 commonwealth within 45 days of the end of the fiscal year, payable first to interest due
45 hereunder and thereafter to principal advanced pursuant to the loan; provided further, that if on
46 the date the loans become due and payable to the commonwealth an outstanding balance exists,
47 and if, on such date, the department, in consultation with the executive office of health and
48 human services, determines that there still exists a need for such housing and that there is
49 continued funding available for the provision of services to such development, the department
50 may, by agreement with the owner of the development, extend the loans for such periods, each
51 period not to exceed 10 years, as the department shall determine; provided, however, that the
52 project shall remain affordable housing for the duration of the loan term, including any extension
53 thereof, as set forth in the contract or agreement entered into by the department; and provided
54 further, that in the event the terms of repayment detailed in this item would cause a project
55 authorized by this item to become ineligible to receive federal funds which would otherwise
56 assist in the development of that project, the department may waive the terms of repayment
57 which would cause the project to become ineligible; and (5) have interest rates fixed at a rate, to
58 be determined by the department, in consultation with the state treasurer; provided further, that
59 expenditures from this item shall not be made for the purpose of refinancing outstanding
60 mortgage loans for community-based housing in existence prior to the effective date of this act;

61 provided further, that community-based housing projects developed pursuant to this item shall
62 not be refinanced during the term of any loan issued pursuant to this item unless the balance of
63 the principal and interest for such loan has been repaid in full at the time of such refinancing;
64 provided further, that the community-based housing projects may be refinanced if the
65 refinancing would result in a reduction of costs paid by the commonwealth; provided further,
66 that a refinanced loan shall be due and payable on a date not later than the date on which the
67 original loan was due and payable, except in accordance with clause (4) when necessary to effect
68 extraordinary repairs or maintenance which shall be approved by the commissioner of
69 developmental services or the commissioner of mental health, as the case may be, and the
70 department; provided further, that the loans shall be provided only for projects conforming to the
71 provisions of this item; provided further, that the loans shall be issued in accordance with a
72 facilities consolidation plan prepared by the secretary of health and human services, reviewed
73 and approved by the department and filed with the secretary for administration and finance and
74 the house and senate committees on ways and means and the joint committee on housing;
75 provided further, that no expenditure shall be made from this item without the prior approval of
76 the secretary for administration and finance; provided further, that the department, the
77 department of mental health and the Community Economic Development Assistance Corporation
78 may identify appropriate financing mechanisms and guidelines for grants or loans from this item
79 to promote private development to produce housing, to provide for independent integrated living
80 opportunities, to write down building and operating costs and to serve households at or below 15
81 per cent of area median income for the benefit of department of mental health clients; provided
82 further, that not more than $10,000,000 may be expended from this item for a pilot program of
83 community-based housing loans to serve mentally ill homeless individuals in the current or
84 former care of the department of mental health; provided further, that in implementing the pilot
85 program, the department shall consider a balanced geographic plan when establishing
86 community-based residences; provided further, that the housing services made available pursuant
87 to such loans shall not be construed as a right or an entitlement for any individual or class of
88 persons to the benefits of the pilot program; provided further, that eligibility for the pilot
89 program shall be established by regulations promulgated by the department; provided further,
90 that the department shall promulgate regulations pursuant to chapter 30A of the General Laws
91 for the implementation, administration and enforcement of this item, consistent with the facilities
92 consolidation plan prepared by the secretary of health and human services, and after consultation
93 with the secretary and the commissioner of the division of capital asset management and
94 maintenance..... $60,000,000

95 7004-0030.. For state financial assistance in the form of loans for the development and
96 redevelopment of community-based housing for persons with disabilities who are
97 institutionalized or at risk of being institutionalized, who are not eligible for housing developed
98 pursuant to item 7004-0029; provided, that the loan program shall be administered by the
99 department of housing and community development, hereinafter referred to in this item as the
100 department, through contracts with the Massachusetts Development Finance Agency established

101 in chapter 23G of the General Laws, the Community Economic Development Assistance
102 Corporation established in chapter 40H of the General Laws, operating agencies established
103 pursuant to chapter 121B of the General Laws and the Massachusetts Housing Finance Agency
104 established in chapter 708 of the acts of 1966; provided further, that the agencies may develop or
105 finance the community-based housing, or may enter into subcontracts with nonprofit
106 organizations established pursuant to chapter 180 of the General Laws or organizations in which
107 such nonprofit corporations have a controlling financial or managerial interest or for-profit
108 organizations; provided, however, that preference for such subcontracts shall be given to
109 nonprofit organizations; provided further, that the department shall consider a balanced
110 geographic plan for such community-based housing when issuing the loans; provided further,
111 that all housing developed with these funds shall be integrated housing as defined by the
112 appropriate state housing and service agencies including the Massachusetts Rehabilitation
113 Commission in consultation with relevant and interested clients, their families, advocates, and
114 other parties as necessary; provided further, that loans issued pursuant to this item shall: (1) not
115 exceed 50 per cent of the financing of the total development costs; (2) be issued only when a
116 contract or agreement for the use of the property for the purposes of such housing provides for
117 repayment to the commonwealth at the time of disposition of the property in an amount equal to
118 the commonwealth's proportional contribution from community based housing to the cost of the
119 development through payments made by the state agency making the contract; (3) only be issued
120 when a contract or agreement for the use of the property for the purposes of such community-
121 based housing provides for the recording of a deed restriction in the registry of deeds or the
122 registry district of the land court of the county in which the real property is located, for the
123 benefit of the departments, running with the land, that the land be used to provide community-
124 based housing for eligible individuals as determined by the Massachusetts rehabilitation
125 commission or other agency of the executive office of health and human services; provided
126 further, that the property shall not be released from such restrictions until the balance of the
127 principal and interest for the loan has been repaid in full or until a mortgage foreclosure deed has
128 been recorded; (4) be issued for a term not to exceed 30 years during which time repayment may
129 be deferred by the loan issuing authority unless, at the end of any fiscal year, cash collections
130 from all sources in connection with a community-based housing project, except for contributions,
131 donations or grant moneys, exceed 105 per cent of cash expenditures on behalf of the project,
132 including debt service, operating expenses, and capital reserves, in which event such excess cash
133 shall be paid to the commonwealth within 45 days of the end of the fiscal year, payable first to
134 interest due hereunder and thereafter to principal advanced pursuant to the loan; provided further,
135 that if on the date the loans become due and payable to the commonwealth an outstanding
136 balance exists, and if on that date, the department, in consultation with the executive office of
137 health and human services, determines that there still exists a need for such housing, the
138 department may, by agreement with the owner of the development, extend the loans for such
139 periods, each period not exceed 10 years, as the department shall determine; provided, however,
140 that the project shall continue to remain affordable housing for the duration of the loan term,

141 including any extensions thereof, as set forth in the contract or agreement entered into by the
142 department; and provided further, that in the event the terms of repayment detailed in this item
143 would cause a project authorized by this item to become ineligible to receive federal funds which
144 would otherwise assist in the development of that project, that commissioner may waive the
145 terms of repayment which would cause the project to become ineligible; and (5) have interest
146 rates fixed at a rate, to be determined by the department, in consultation with the state treasurer;
147 provided further, that expenditures from this item shall not be made for the purpose of
148 refinancing outstanding mortgage loans for community-based housing in existence before the
149 effective date of this act; provided further, that community-based housing projects developed
150 pursuant to this item shall not be refinanced during the term of any loan issued pursuant to this
151 item unless the balance of the principal and interest for such loan is repaid in full at the time of
152 such refinancing; provided further, that the community-based housing projects may be
153 refinanced if the refinancing would result in a reduction of costs paid by the commonwealth;
154 provided further, that a refinanced loan shall be due and payable not later than the date on which
155 the original loan was due and payable, except in accordance with clause (4) of this item or when
156 necessary to effect extraordinary repairs or maintenance which shall be approved by the
157 commissioner of the Massachusetts rehabilitation commission or other agency of the executive
158 office of health and human services, as appropriate, and the department; provided further, the
159 loans shall be provided only for projects conforming to this item; provided further, that the loans
160 shall be issued in accordance with an enhancing community-based services plan prepared by the
161 secretary of health and human services, in consultation with the department and filed with the
162 secretary for administration and finance and the house and senate committees on ways and
163 means and the joint committee on housing; provided further, that no expenditure shall be made
164 from this item without the prior approval of the secretary for administration and finance;
165 provided further, that the department shall promulgate regulations pursuant to chapter 30A of the
166 General Laws for the implementation, administration and enforcement of this item, consistent
167 with the enhancing community-based services plan prepared by the secretary of health and
168 human services after consultation with the secretary and the commissioner of capital asset
169 management and maintenance..... $30,000,000

170 7004-0036.. For the purpose of state financial assistance in the form of grants or loans for
171 the Housing Innovations Trust Fund established in section 2 of chapter 121E of the General
172 Laws; provided, however, that not less than 25 per cent shall be used to fund projects which
173 preserve and produce housing for families and individuals with incomes of not more than 30 per
174 cent of the area median income, as defined by the United States Department of Housing and
175 Urban Development..... $75,000,000

176 SECTION 2. Section 13A of chapter 22 of the General Laws is hereby amended by
177 striking out the words “physically handicapped,” “physically handicapped person,” and
178 “handicapped person” wherever they appear and replacing said words with the following:-
179 “person with disabilities”.

180 SECTION 3. Section 13A of chapter 22 of the General Laws is hereby amended by
181 striking out the fourth paragraph in its entirety and replacing it with the following new
182 paragraph:-

183 The board shall make and from time to time alter, amend, and repeal, in accordance with
184 the provisions of chapter thirty A, rules and regulations designed to make public buildings
185 accessible to, functional for, and safe for use by persons with disabilities. Such rules and
186 regulations of the board shall also establish standards and procedures designed to make readily
187 accessible and usable, or adaptable for persons with disabilities (1) all dwelling units in multiple
188 dwellings equipped with an elevator and (2) all ground floor dwelling units in multiple dwellings
189 not equipped with an elevator, including the public use and common use portions of such
190 dwellings; provided, however, that the dwelling is constructed for first occupancy after March
191 thirteenth, nineteen hundred and ninety-one. Said rules and regulations shall include, but need
192 not be limited to, detailed architectural standards further defining adaptable dwelling units, and
193 such other provisions necessary to provide rights and remedies substantially equivalent to or
194 greater than the rights and remedies provided by the Federal Fair Housing Amendments Act of
195 1988, and regulations promulgated to implement said Act that pertain to multiple dwellings.

196 SECTION 4. Section 13A of chapter 22 of the General Laws is hereby amended by
197 inserting after the fourth paragraph the following new paragraph:-

198 The board shall make and from time to time alter, amend, and repeal, in accordance with
199 the provisions of chapter thirty A, rules and regulations designed to make publicly assisted
200 housing accommodations, and lodging or residential facilities for hire, rent, lease or sale readily
201 accessible and usable, or adaptable for use by persons with disabilities. Said rules and
202 regulations shall include, but need not be limited to, detailed architectural standards further
203 defining adaptable and accessible dwelling units, including the public use and common use
204 portions of such dwellings, and such other provisions necessary to provide rights and remedies
205 substantially equivalent to or greater than the rights and remedies provided by Section 504 of the
206 Rehabilitation Act of 1973 and regulations promulgated by the United States Department of
207 Housing and Urban Development to implement said Act, and the Americans with Disabilities
208 Act of 1990, as amended, and regulations promulgated by the United States Department of
209 Justice to implement said Act. Said rules and regulations shall be available to the public at no
210 cost.

211 With respect to any multiple dwelling, the rules and regulations of the board shall
212 incorporate any safe harbor standard adopted by the United States Department of Housing and
213 Urban Development pursuant to the Federal Fair Housing Amendments Act of 1988, except as
214 specifically modified by the board to provide greater access for persons with disabilities. With
215 respect to any publicly assisted housing accommodations, or lodging or residential facilities for
216 hire, rent, lease or sale consisting of fifteen or more dwelling units, the rules and regulations of
217 the board shall incorporate standards adopted by the United States Department of Housing and

218 Urban Development and the United States Department of Justice pursuant to Section 504 of the
219 Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as
220 amended, including any applicable referenced standards set forth in the Americans with
221 Disabilities Act and the Architectural Barriers Act Accessibility Guidelines adopted from time to
222 time by the United States Access Board, except as specifically modified by the board to provide
223 greater access for persons with disabilities.

224 The code structure in the rules and regulations adopted by the board shall utilize the same
225 code structure as the state building code adopted by the state board of building regulations and
226 standards pursuant to chapter one hundred and forty-three of the General Laws.

227 SECTION 5. Section 13A of chapter 22 of the General Laws is hereby amended by
228 striking out paragraphs seven and eight in their entirety and inserting the following new
229 paragraphs:-

230 There shall be no construction, reconstruction, alteration or remodeling of a public
231 building, publicly assisted building, publicly assisted housing accommodation, or a lodging or
232 residential facility for hire, rent, or lease containing fifteen or more dwelling units, except in
233 conformity with said rules and regulations, nor shall the use of any building be changed to a
234 residential use or a use in which the building is open to and used by the public as defined in this
235 section until such building so conforms, and a copy of the plans and specifications have been
236 approved as provided in this section and in section three W of chapter one hundred and forty-
237 three, showing compliance with said rules and regulations; provided that with respect to any
238 publicly assisted building or a lodging or residential facility for hire, rent, or lease containing
239 fifteen or more dwelling units, the rules and regulations shall provide for rights and remedies
240 substantially equivalent or greater than the Federal Fair Housing Amendments Act of 1988,
241 Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990,
242 as amended, as applicable; provided further, however, that if the board determines that
243 compliance with said rules and regulations is not feasible, or would result in excessive and
244 unreasonable costs without any substantial benefit to persons with disabilities in a particular
245 case, it may provide for modification of, or substitution for, such rule or regulation. In all
246 petitions for variance, the burden of proof shall be on the party requesting a variance to justify its
247 allowance. Unless otherwise specified, five per cent but not less than one of the units for hire,
248 rent, lease, or sale in publicly assisted buildings, publicly assisted housing accommodations, or
249 lodging or residential facilities for hire, rent, or lease containing fifteen or more units shall be
250 readily accessible and usable, or adaptable for persons with mobility disabilities, and no less than
251 two per cent but not less than one of the dwelling units shall be readily accessible and usable, or
252 adaptable for persons with hearing or visual disabilities. In the event that the board determines
253 that the need, in certain areas of the commonwealth, for such units either exceeds or does not
254 require said percentages, the board may require that, in said areas a lesser percentage of units, or
255 a greater percentage not to exceed ten percent be fully adaptable and safe for persons with
256 disabilities. The board may make such determination only if there is sufficient factual basis to

257 establish with a reasonable degree of certainty the present and future needs for said adaptable
258 units in certain areas of the commonwealth. A percentage of less than the amounts set forth
259 herein shall not be established unless such adaptable units, which are not needed by persons with
260 disabilities, cannot be readily hired, rented, leased, or sold to other persons.

261 SECTION 6. Section 13A of chapter 22 of the General Laws is hereby amended by
262 inserting after the definition of “public building” the following:- “Publicly assisted housing
263 accommodations,” shall have the same meaning as set forth in subsection ten of section one of
264 chapter one hundred and fifty-oneB of the General Laws.

265 SECTION 7. Section 13A of chapter 22 of the General Laws is hereby amended by
266 deleting the following phrase from paragraph ten of the definitions:- "with a capacity of fifteen
267 or more automobiles".

268 SECTION 8. The architectural access board shall no later than three hundred days after
269 the effective date of this Act promulgate regulations implementing the provisions herein.