SENATE DOCKET, NO. 1663 FILED ON: 1/21/2011

SENATE . . . . . No. 611

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. 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 reforming Chapter 40B.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard T. Moore	
	☐ *[District]*
	☐

SENATE DOCKET, NO. 1663 FILED ON: 1/21/2011

SENATE . . . . . No. 611

By Mr. Moore, petition (accompanied by bill, Senate, No. 611) of Moore for legislation relative to reforming chapter 40b [Joint Committee on Housing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *653* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act reforming Chapter 40B.

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. Chapter 40B of the Massachusetts general laws is hereby amended by striking out section 20, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:- Definitions

The following words, wherever used in this section and in sections twenty-one to twenty-three, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:--

"Low or moderate income housing", any housing subsidized by the federal or state government under any program to provide direct financial assistance for the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization. No projects proposed under Sections 20-23 of this chapter shall be considered low or moderate income housing unless at least 33% of the total number of homes proposed are restricted for sale to “low or moderate income households,” as such term is defined by the Department of Housing and Community Development (the “Department”).

"Uneconomic", any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return on its actual costs of

development in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations. In calculating an applicant's reasonable return, an applicant will be limited to the lesser of its actual costs or the fair market value of such costs or services. In no event shall Limited Dividend entities be permitted to earn in excess of a 20% profit on sale-based projects or in excess of a 10% profit per year on rental projects. All profits in excess of such amount shall be paid to the municipality for the exclusive purpose of facilitating the development or maintenance of affordable housing.

"Consistent with local needs", requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the city or town or on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar year; provided, however, that land area owned by the United States, the commonwealth or any political subdivision thereof, the metropolitan district commission or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs. In determining whether a project is consistent with local needs, a presiding zoning board of appeals may rely upon accepted standards for municipal planning and environmental protection, as may be contained within the Town's duly adopted Master Plan or Certified Housing Plan or as may adopted or promoted by, the Department or any other State agency or Regional Planning Commission. Any requested waivers from local regulations and requirements shall be limited to the dimensional criteria under Zoning By-laws and Regulations for the Subdivision of Land. No application for a permit under G.L. c. 40B, §§20-23 shall propose more than twice the amount of housing units than would be permitted under existing by-laws and regulations.

"Local Board", any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of

57 the construction of buildings or the power of enforcing municipal building laws, or city council
58 or board of selectmen.