

**SENATE . . . . . No. 860**

By Mr. Keating, petition (accompanied by bill, Senate, No. 860) of William R. Keating and Christopher J. Hodgkins for legislation to prohibit any zoning or ordinance by-law which unduly restricts the operation of elder day care centers in the Commonwealth. Local Affairs.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO PROVIDING ELDER DAY CARE IN THE COMMONWEALTH.

*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 1A of Chapter 40A is hereby amended  
2 by inserting after the word "meanings:" in line to the following: —  
3 "Elder care facility" any facility operated on a regular basis  
4 which receives not more than 10 individuals over sixty years of  
5 age, for nonresidential custody and care during part or all of the  
6 day separate from established residency and must be staffed by  
7 at least two caretakers one of whom shall be a licensed practical  
8 nurse.

1 SECTION 2. Section 3 of said Chapter is hereby amended by  
2 inserting after the third paragraph the following paragraph: —  
3 No zoning ordinance or bylaw in any city or town shall prohibit  
4 or require a special permit for, the use of land or structures, or  
5 the expansion of existing structures, for the primary, accessory  
6 or incidental purpose of operating an elder care facility; provided,  
7 however, that such land or structures may be subject to reasonable  
8 regulations concerning the bulk and height of structures and  
9 determining yard sizes, lot area, setbacks, open space, parking and  
10 building coverage requirements.

1 SECTION 3. Said chapter 40A is hereby further amended by  
2 inserting after section 9C the following section: —

3 Section 9D. When any zoning ordinance or bylaw in any city  
4 or town limits the floor area of any structure, such floor area shall  
5 be measured exclusive of any portion of such structure in which  
6 an elder care facility is to be operated as an accessory or incidental  
7 use, and the otherwise allowable floor area of such structure shall  
8 be increased by an amount equal to the floor area of such elder  
9 care facility up to a maximum increase of ten per cent. In any  
10 case where the otherwise allowable floor area of a structure has  
11 been increased pursuant to the provisions of the section, the  
12 portion of such structure in which an elder care facility is to be  
13 operated as an accessory or incidental use shall not be used for  
14 any other purpose unless, following the completion of such  
15 structure, the board authorized to grant variances under such  
16 zoning ordinance or bylaw shall have determined, with the written  
17 concurrence of the office of elder affairs, that the public interest  
18 and convenience do not require the operation of such facility. The  
19 procedures governing the granting of variances, including all  
20 rights of appeal shall apply to any such determination.

21 The owner of a building as to which the allowable floor area  
22 has been increased pursuant to this section shall be allowed to  
23 charge the operation of the elder care facility for the following:  
24 the cost of utilities used by the elder care facility, a reasonable  
25 building operating fee for the costs of maintenance, cleaning and  
26 security and real estate taxes for the portion of the building which  
27 is the elder care facility, if such facility is operated by a for-profit  
28 provider. The owner shall not impose a charge for the cost of  
29 alterations necessary to meet the requirements of the office of elder  
30 affairs regarding the physical facility of an elder care facility.

1 SECTION 4. Chapter 59 of the General Laws as appearing in  
2 the 1990 Official Edition is hereby amended by inserting after  
3 section 3F the following section: —

4 For the purpose of this chapter and any other general law  
5 classifying real property operated as an elder care facility pursuant  
6 to Section 9D of Chapter forty A in the same category as property  
7 used or held for human habitation.