

By Mr. McDonough of Boston, petition of John E. McDonough for legislation to establish a housing fund trust within the Executive Office of Communities and Development. Housing and Urban Development.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT ESTABLISHING THE HOUSING FUND TRUST WITHIN THE EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT WITH THREE FUNDING SOURCES.

*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. LOW AND MODERATE INCOME  
2 HOUSING FUND TRUST

3 Section 32B of the General Laws, as most recently amended  
4 by Chapter 259 of the Acts of 1985, is hereby further amended  
5 by adding after Section 27 the following sections: —

6 Section 28. Definitions Applicable to Massachusetts Housing  
7 Fund Trust.

8 As used in sections twenty-nine to thirty-one, inclusive, the  
9 following words shall have the following meanings, unless a  
10 different meaning clearly is indicated from the context:

11 (a) "Affordable housing" shall mean housing whose combined  
12 rental and utility costs are no greater than twenty-five percent of  
13 the net income of persons of low or moderate income, as the case  
14 may be.

15 (b) "Eligible applicants" shall mean private nonprofit  
16 organizations proposing to make available affordable housing to  
17 low and/or moderate income persons.

18 (c) "Fund" shall mean the low and moderate income housing  
19 fund created by section thirty(a).

20 (d) "Permanent housing" shall mean housing which is  
21 reasonably likely to remain affordable housing for at least forty  
22 years, from the date of initial occupancy.

23 (e) Person of "low income" shall mean any single individual  
24 or any family whose net income is less than fifty percent (50%)  
25 of the median income of, respectively, all single persons or all  
26 families, residing in the applicable geographical area of the  
27 commonwealth as determined by the department.

28 (f) "Person of moderate income" shall mean any single  
29 individual or any family whose net income is less than eighty  
30 percent (80%) of the median income of, respectively, all single  
31 persons or all families, residing in the applicable geographical area  
32 of the commonwealth as determined by the department.

33 (g) "Person of very low income" shall mean any single  
34 individual or any family whose net income is less than thirty  
35 percent (30%) of the median income of, respectively, all single  
36 persons or all families, residing in the applicable geographical area  
37 of the commonwealth as determined by the department.

38 (h) "Market-rate interest" shall mean the rates of interest  
39 yielded by various types of accounts and securities as determined  
40 from time to time by the department.

41 Section 29. Public Purpose.

42 *Whereas*, There now exists in many cities and towns in the  
43 commonwealth an acute shortage of decent, safe and sanitary  
44 housing available at rentals or costs which low income persons  
45 can afford; and

46 *Whereas*, Such shortage results from both public and private  
47 actions, such as the taking of property for public facilities, the  
48 conversion to condominiums or other higher cost shelter of  
49 housing previously affordable to low or moderate income persons  
50 and the abandonment of low income housing programs; and

51 *Whereas*, Federal financing for the creation and satisfactory  
52 operation of such housing has in recent years been severely  
53 curtailed; and

54 *Whereas*, The commonwealth has been unable through its own  
55 programs to keep pace with the growing need for such housing;  
56 and

57 *Whereas*, All of these developments have led to an increase in  
58 the number of low or moderate income persons who are homeless  
59 or denied access to housing which is decent, safe and sanitary;

60 *Now Wherefore*, The general court hereby finds and declares  
61 as follows:

62 1. The existing shortage in the commonwealth of decent and  
63 affordable housing or low income persons is inimical to the safety,  
64 health and welfare of all of the residents of the commonwealth  
65 and stultifies sound growth of the communities therein.

66 2. In view of the necessarily high costs in this commonwealth  
67 of constructing and maintaining decent housing, even of the most  
68 modest design and appointments, this housing emergency cannot  
69 be met by the private sector nor by municipal or regional housing  
70 agencies operating public, subsidized, and rental assistance  
71 housing programs.

72 3. It is therefore imperative that the commonwealth assume  
73 responsibility for finding appropriate sources of funds and  
74 appropriate programs for such housing for such persons.

75 4. Uncommitted interest earned on

76 (a) funds set aside for real estate transactions and financing  
77 costs,

78 (b) rental security deposits which are not earning maximum  
79 interest, and

80 (c) advance payments of real estate taxes, insurance premiums,  
81 or other charges applicable to real property would all constitute  
82 an appropriate source of funds for such housing.

83 Section 30. Low and Moderate Income Housing Fund and  
84 Nonprofit Housing Development Program.

85 (a) There is hereby established, and set up on the books of the  
86 commonwealth, a fund called the low and moderate income  
87 housing fund. All revenues collected from the sources described  
88 in section thirty-one shall be credited in trust to the fund at such  
89 times and in accordance with such terms as the department shall  
90 from time to time establish, but such revenues shall not be deemed  
91 to be money received on account of the commonwealth, and  
92 nothing in sections twenty-eight through thirty-one of this chapter  
93 shall be understood as pledging the faith and credit of the  
94 commonwealth. At such times as the department shall direct, the  
95 state treasurer shall distribute to the department all revenues  
96 received by the fund, as well as all interest thereon. Such funds  
97 shall be used by the department to facilitate the creation and  
98 retention of permanent, affordable housing for low and moderate  
99 income persons and families, as provided in subsection (b) hereof.

100 No such funds shall be used for any other purpose, except that  
101 the department may use no more than 10% of the fund on a  
102 calendar year basis for reasonable administrative expenses for the  
103 purposes of sections twenty-eight through thirty-one of this  
104 chapter.

105 (b) The department shall establish a nonprofit housing  
106 development program, and shall enter into contracts with eligible  
107 applicants for grants and loans, including grants and loans for  
108 pre-development, land, acquisition, capital, development and  
109 other costs and operating subsidies, for permanent, affordable  
110 rental and homeownership housing for persons of low and  
111 moderate income according to standards and regulations that the  
112 department shall make and publish, provided, that in entering into  
113 contracts pursuant to this section, the department shall give  
114 priority to the following permanent, affordable housing projects:  
115 (i) projects to be created in geographical areas with the greatest  
116 need for affordable housing; (ii) projects containing the highest  
117 number of affordable housing units for low income people; (iii)  
118 projects containing the highest number of affordable housing  
119 units; and (iv) projects containing the maximum number of units  
120 of the size and characteristics for which the need among persons  
121 of low and moderate income is greatest relative to the available  
122 supply as the department shall from time to time determine.  
123 Provided, however, that at least fifty percent of such funds, net  
124 of expenses, shall be used for persons of low income and at least  
125 twenty-five percent of such funds, net of expenses, shall be used  
126 for persons of very low income. No application from an eligible  
127 applicant shall be rejected solely or primarily because a greater  
128 level of subsidy will be required to make the proposal feasible due  
129 to lower obtainable rental levels prevailing in the geographical  
130 area of the proposed project as opposed to other areas of the  
131 commonwealth. The department may contract with other public  
132 or quasi-public agencies to administer all or part of the program  
133 established by this section.

134 (c) The nonprofit housing development program of the  
135 department shall be guided in its operations by a Housing fund  
136 advisory board of seven (7) members, appointed by the governor,  
137 one of whom shall be the secretary of communities and

138 development or his/her designee, one of whom shall be the  
139 secretary of administration and finance or his/her designee, *ex*  
140 *officiis*; one of whom shall be experienced generally in rental  
141 housing matters; one of whom shall be experienced in the  
142 provision of low-moderate income rental housing and who shall  
143 be appointed by the governor from among a list of at least three  
144 persons submitted severally by the Massachusetts association of  
145 community development corporations and the Massachusetts  
146 nonprofit housing association; four of whom shall be low income  
147 persons or their representatives, appointed by the governor from  
148 lists of at least five persons for each vacancy submitted severally  
149 by the Massachusetts affordable housing alliance, the Massachu-  
150 setts coalition for the homeless, the Massachusetts tenants  
151 organization and the Massachusetts union of public housing  
152 tenants; and one of whom shall be familiar with the development  
153 of low-moderate income rental housing and who shall be  
154 appointed by the governor from a list of at least three persons  
155 submitted by the Massachusetts association of realtors. Of said  
156 appointees at least three shall reside outside the greater Boston  
157 regional planning area. Except for the two *ex officio* members,  
158 each member shall be appointed for a term of five years; provided,  
159 that in making the initial appointments the governor shall appoint  
160 three members to serve for five years, two members to serve for  
161 four years and two members to serve for three years. Any person  
162 appointed to fill a vacancy shall serve only for the unexpired term.  
163 Any member shall be eligible for reappointment. The advisory  
164 board shall designate one of its members to serve as chair and one  
165 of its members to serve as vice-chair. Five members of the board  
166 shall constitute a quorum and the affirmative votes of a majority  
167 of the members present, or four votes, whichever is greater, shall  
168 be necessary for any action by the board, except that the number  
169 required for a quorum and the number of such affirmative votes  
170 shall be reduced by the number of vacancies existing from time  
171 to time in the membership of the board. The members of the board  
172 shall serve without compensation, but each member shall be  
173 reimbursed for his or her necessary expenses incurred in the  
174 discharge of official duties. The advisory board shall review the  
175 standards, rules, regulations, policies, and operations adopted and

176 followed by the department for the operation of the non-profit  
177 housing development program, and as it sees fit shall review  
178 applications received by the department and contracts entered  
179 into pursuant to this section. The advisory board shall make  
180 suggestions and recommendations to the department to assist it  
181 in achieving the purposes of this section as efficiently and fairly  
182 as possible with due regard for the legitimate needs and concerns  
183 of eligible applicants and those in need of affordable housing in  
184 the commonwealth.

185 Section 31. Source of Funds For Housing Fund Trust.

186 (a) Any real estate broker, agent or any other person or  
187 organization, other than an attorney who is participating in the  
188 interest on lawyers trust accounts program established by the  
189 supreme judicial court, who holds any security deposit, advance  
190 payment or other payment for the sale of real property, and does  
191 not invest such funds for the benefit of the parties to the sale, shall  
192 invest such funds in an interest-bearing account or accounts at  
193 the highest feasible yield as determined by the department, and  
194 shall cause the interest earned on such funds to be paid over at  
195 the end of each calendar year to the low and moderate income  
196 housing fund.

197 (b) Any person or organization, other than nonprofit owners  
198 of government subsidized housing, which rents real property and  
199 receives a security deposit or other advance payment for the  
200 occupancy of such property, which is to be held during all or part  
201 of the rental period, shall invest such security deposit or other  
202 advance payment in an account within the commonwealth to be  
203 designated by the department. Such funds shall be managed by  
204 the institution in which they are invested so as to yield the  
205 maximum feasible interest thereon. Any interest earned on such  
206 funds which exceeds the interest required to be paid to the lessee  
207 of such real property shall be paid at the end of each calendar  
208 year to the low and moderate income housing fund.

209 (c) Any person or organization which holds a mortgage on real  
210 property and accepts advance payments of real estate taxes,  
211 insurance premiums or other charges applicable to such real  
212 property shall invest such payments so as to yield the maximum  
213 feasible interest thereon. Any interest earned on such payments

214 which exceeds the interest required or agreed to be paid to the  
215 mortgagor of such real property shall be paid at the end of each  
216 calendar year to the low and moderate income housing fund.

217 (d) Notwithstanding anything in section 15B of chapter one  
218 hundred eighty-six to the contrary, the department may establish  
219 a program for pooling the source of interest provided for in this  
220 section and may select, through competitive bidding, one or more  
221 financial institutions to administer the funds involved in order to  
222 maximize the interest yield on such funds. Any such institution  
223 shall not be liable or responsible to either of the parties for any  
224 disputes between the parties. Any unclaimed funds, shall, subject  
225 to the procedures set forth in chapter two hundred A, be paid over  
226 to the low and moderate income housing fund. The department  
227 shall issue such regulations as shall be necessary or appropriate  
228 to administer the housing development program and the sources  
229 of funding for it.

1 SECTION 2. The department is hereby authorized and  
2 directed to draw such funds from the reserves of the Massachusetts  
3 Housing Partnership or Massachusetts Housing Finance Agency  
4 reserve funds or from both as shall be necessary to administer the  
5 program authorized by this act until such time as adequate funds  
6 are available from the low and moderate income housing fund.  
7 Such loans shall be repaid, with reasonable interest, as soon as  
8 feasible.

1 SECTION 3. Section 1 of this act shall take effect nine months  
2 after its approval by the governor and shall apply to all new leases  
3 and lease renewals occurring after such nine month period.

