

By Mr. Berry, a petition (accompanied by bill, Senate, No. 491) of Frederick E. Berry for legislation to establish the housing fund trust within the Executive Office of Communities and Development. Housing and Urban Development.

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**The Commonwealth of Massachusetts**

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

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**AN ACT ESTABLISHING THE HOUSING FUND TRUST WITHIN THE EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT.**

*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 HOUS-  
2 ING FUND TRUST

3 Chapter 23B 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 28 the following sections: —

6 Section 29. Definitions Applicable to Massachusetts Housing  
7 Fund Trust.

8 As used in sections thirty-one to thirty-two, 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-one (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 or  
24 any family whose net income is less than fifty percent (50%) of  
25 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 of 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 individual  
34 or any family whose net income is less than thirty percent (30%)  
35 of the median income of, respectively, all single persons or all  
36 families, residing in the applicable geographical area of the  
37 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 30. 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 for low income persons is inimical to the  
64 safety, health and welfare of all of the residents of the  
65 commonwealth and stultifies sound growth of the communities  
66 therein.

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

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

76 4. Uncommitted interest earned on rental security deposits  
77 which are not earning maximum interest would constitute an  
78 appropriate source of funds for such housing.

79 Section 31. Low and Moderate Income Housing Fund and  
80 Nonprofit Housing Development Program.

81 (a) There is hereby established, and set up on the books of the  
82 commonwealth, a fund called the low and moderate income  
83 housing fund. All revenues collected from the sources described  
84 in section thirty-one shall be credited in trust to the fund at such  
85 times and in accordance with such terms as the department shall  
86 from time to time establish, but such revenues shall not be deemed  
87 to be money received on account of the commonwealth, and  
88 nothing in sections twenty-nine through thirty-two of this chapter  
89 shall be understood as pledging the faith and credit of the  
90 commonwealth. At such times as the department shall direct, the  
91 state treasurer shall distribute to the department all revenues  
92 received by the fund, as well as all interest thereon. Such funds  
93 shall be used by the department to facilitate the creation and  
94 retention of permanent, affordable housing for low and moderate  
95 income persons and families, as provided in subsection (b) hereof.  
96 No such funds shall be used for any other purpose, except that  
97 the department may use no more than 10% of the fund on a  
98 calendar year basis for reasonable administrative expenses for the

99 purposes of sections twenty-nine through thirty-two of this  
100 chapter.

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

130 (c) The nonprofit housing development program of the  
131 department shall be guided in its operations by a Housing fund  
132 advisory board of seven (7) members, appointed by the governor,  
133 one of whom shall be the secretary of communities and  
134 development or his/her designee, one of whom shall be the  
135 secretary of administration and finance or his/her designee, *ex*  
136 *officiis*; one of whom shall be experienced generally in rental  
137 housing matters; one of whom shall be experienced in the

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

177 department to assist it in achieving the purposes of this section  
178 as efficiently and fairly as possible with due regard for the  
179 legitimate needs and concerns of eligible applicants and those in  
180 need of affordable housing in the commonwealth.

181 Section 32. Source of Funds For Housing Fund Trust.

182 (a) Any person or organization, other than nonprofit owners  
183 of government subsidized housing, which rents real property and  
184 receives a security deposit or other advance payment for the  
185 occupancy of such property, which is to be held during all or part  
186 of the rental period, shall invest such security deposit or other  
187 advance payment in an account within the commonwealth to be  
188 designated by the department. Such funds shall be managed by  
189 the institution in which they are invested so as to yield the  
190 maximum feasible interest thereon. Any interest earned on such  
191 funds which exceeds the interest required to be paid to the lessee  
192 of such real property shall be paid at the end of each calendar  
193 year to the low and moderate income housing fund.

194 (b) Notwithstanding anything in section 15B of chapter one  
195 hundred eighty-six to the contrary, the department may establish  
196 a program for pooling the source of interest provided for in this  
197 section and may select, through competitive bidding, one or more  
198 financial institutions to administer the funds involved in order to  
199 maximize the interest yield on such funds. Any such institution  
200 shall not be liable or responsible to either the lessor or lessee for  
201 any disputes between the lessor and lessee. Any unclaimed funds  
202 shall, subject to the procedures set forth in chapter two  
203 hundred A, be paid over to the low and moderate income housing  
204 fund. The department shall issue such regulations as shall be  
205 necessary or appropriate to administer the housing development  
206 program and the sources 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.

