

# HOUSE . . . . . No. 5575

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 17, 1971.

The committee on Urban Affairs, to whom was referred the petition (accompanied by bill, House, No. 2162) of Martin A. Linsky and Robert S. Creedon, Jr., for legislation to make certain changes in the law providing for the construction of low or moderate income housing in cities and towns in which local restrictions hamper such construction, report recommending that the accompanying bill (House, No. 5576) ought to pass [Representatives Brett of Quincy, Carey of Boston and Towse of Stoneham dissenting].

For the committee,

ROBERT S. CREEDON, JR.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-One.

**AN ACT CLARIFYING CERTAIN PROVISIONS OF THE STATUTE PROVIDING FOR THE CONSTRUCTION OF LOW OR MODERATE INCOME HOUSING IN CITIES AND TOWNS IN WHICH LOCAL RESTRICTIONS HAMPER SUCH CONSTRUCTION.**

*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. Chapter 40B of the General Laws is hereby  
2 amended by striking out section 20, as appearing in section 1 of  
3 chapter 774 of the acts of 1969, and inserting in place thereof  
4 the following section: —

5 *Section 20.* The following words, wherever used in this  
6 section and in sections twenty-one to twenty-three, inclusive,  
7 shall, unless a different meaning clearly appears from the  
8 context, have the following meanings: —

9 “Low or moderate income housing”, any housing subsidized  
10 through loan, grant, interest subsidy, rent subsidy or guarantee  
11 by the federal or state government under any program to assist  
12 the construction, purchase or rental of low or moderate income  
13 housing as defined in the applicable federal or state statute,  
14 whether built, operated or otherwise made available by any  
15 public agency or any nonprofit or limited dividend organization.  
16 Such housing shall include any housing as to which the owner  
17 participates in any leased housing or rent supplement program  
18 and shall also include turnkey housing.

19 “Uneconomic”, any condition brought about by any single  
20 factor or combination of factors to the extent that it makes it  
21 impossible for a public agency or nonprofit organization to  
22 proceed in building, purchasing or operating low or moderate  
23 income housing without financial loss, or for a limited dividend  
24 organization to proceed and still realize a reasonable return in  
25 building or operating such housing within the limitations set by  
26 the subsidizing agency of government on the size or character of

27 the development or on the amount or nature of the subsidy or on  
28 the tenants, rentals and income permissible, and without substan-  
29 tially changing the rent levels and unit sizes proposed by the  
30 public agency or nonprofit or limited dividend organization.

31 “Consistent with local conditions”, local and state require-  
32 ments and regulations affecting proposed housing which is the  
33 subject of an application for a comprehensive permit pursuant to  
34 Section 21 of this chapter shall be consistent with local  
35 conditions if there is no local and regional need for low and  
36 moderate income housing and if the construction or operation of  
37 the proposed housing severely imperils the health or safety of the  
38 occupants of the proposed housing or of the residents of the city  
39 or town; if such housing is not planned to be in reasonable  
40 proximity to public transportation, schools, recreation facilities  
41 and shopping and service facilities needed by residents of the  
42 proposed housing; if such proposed housing is unreasonably  
43 deficient in public access and provision for off-street parking; if  
44 the density and site planning of the proposed housing is wholly  
45 out of keeping with past and present land use policies of the city  
46 or town; if it is unfeasible to provide needed utility services to  
47 such housing; and if the proposed location of the housing is not a  
48 location proposed in a plan of the city or town, approved by the  
49 commissioner of community affairs, containing more appropriate  
50 sites available in such city or town to enable it to meet local and  
51 regional needs for low or moderate income housing reasonably  
52 promptly. Provided, however, that such requirements and regula-  
53 tions shall not be more restrictive than those applied to  
54 unsubsidized multiple unit housing. Local and regional need for  
55 such housing shall be conclusively shown by a finding of such  
56 need made by the subsidizing agency of government. Require-  
57 ments or regulations shall be consistent with local conditions  
58 when imposed by a board of zoning appeals after comprehensive  
59 hearing in a city or town where (1) low or moderate income  
60 housing units exist which are in excess of ten percent of the  
61 housing units reported in the latest decennial census of the city  
62 or town or on sites comprising one and one half percent or more  
63 of the total land area zoned for residential, commercial or  
64 industrial use or (2) the application before the board would  
65 result in the commencement of construction of units of such  
66 housing on sites comprising more than three tenths of one

67 percent of such land area or ten acres, whichever is larger, in any  
68 one calendar year; provided, however, that land area owned by  
69 the United States, the commonwealth or any political subdivision  
70 thereof, the metropolitan district commission or any public  
71 authority shall be excluded from the total land area referred to  
72 above when making such determination of consistency with local  
73 conditions. In the case of subsidized low or moderate income  
74 housing units which are part of a project containing units which  
75 are not for low or moderate income persons, the land area to be  
76 considered for purposes of the quotas set forth in the previous  
77 sentence shall be the same percentage of the land area of such  
78 project as the number of low or moderate income units in such  
79 project bears to the total number of units.

80 “Local Board”, any town or city board of survey, board of  
81 health, board of subdivision control appeals, planning board,  
82 building inspector or the officer or board having supervision of  
83 the construction of buildings or the power of enforcing munic-  
84 ipal building laws, or board of selectmen, city council or town  
85 meeting.

1 SECTION 2. Said chapter 40B is hereby further amended by  
2 striking out section 21, as so appearing, and inserting in place  
3 thereof the following section: —

4 *Section 21.* Any public agency or limited dividend or non-  
5 profit organization proposing to build low or moderate income  
6 housing, or any public agency proposing to purchase, operate or  
7 authorize the construction or occupation of such housing, may  
8 submit to the board of appeals, established under section  
9 fourteen of chapter forty A, a single application in lieu of  
10 separate applications to the applicable local boards. The applica-  
11 tion shall include copies of such site plans, financing proposals  
12 and other papers as have been submitted to the subsidizing  
13 agency of government, and such other material as shall be  
14 required by regulation of the department of community affairs.  
15 The board of appeals shall forthwith notify each such local  
16 board, as applicable, of the filing of such application by sending a  
17 copy thereof to such local boards for their recommendations and  
18 shall, within thirty days of the receipt of such application, hold a  
19 public hearing on the same. The board of appeals shall request  
20 the appearance at said hearing of such representatives of said

21 local boards as are deemed necessary or helpful in making its  
22 decision upon such application and shall have the same power to  
23 issue permits or approvals as any local board or official who  
24 would otherwise act with respect to such application, including  
25 but not limited to the power to attach to said permit or approval  
26 conditions and requirements with respect to height, site plan, size  
27 or shape, or building materials as are consistent with the terms of  
28 this section. The board of appeals, in making its decision on said  
29 application, shall take into consideration the recommendations  
30 of the local boards and shall have the authority to use the  
31 testimony of consultants. It shall determine whether conditions  
32 and requirements to be imposed on such housing make its  
33 construction or operation uneconomic and, if so, whether such  
34 conditions and requirements are consistent with local conditions.  
35 The provisions of section seventeen of chapter forty A shall  
36 apply to all such hearings. The board of appeals shall render a  
37 decision, based upon a majority vote of said board, within forty  
38 days after the termination of the public hearing and, if favorable  
39 to the applicant, shall forthwith issue a comprehensive permit or  
40 approval. If there has been no final approval of financing by the  
41 subsidizing agency of government, the board of appeals shall not  
42 deny a permit solely on the ground that such approval has not  
43 been received, but shall condition the permit upon the applicant  
44 obtaining such approval. Any requirements of the subsidizing  
45 agency of government imposed after receipt of a conditional  
46 permit shall be incorporated into such permit without the  
47 necessity of a further hearing. If said hearing is not convened or a  
48 decision is not rendered within the time allowed, unless the time  
49 has been extended by mutual agreement between the board and  
50 the applicant, the application shall be deemed to have been  
51 allowed and the comprehensive permit or approval shall forth-  
52 with issue. Any person aggrieved by the issuance of a compre-  
53 hensive permit or approval may appeal to the supreme judicial  
54 court under the same procedures provided in section five of  
55 chapter twenty-five for review of orders of the department of  
56 public utilities, except that review shall be limited to the issues  
57 which can be reviewed by the housing appeals committee under  
58 section twenty-three of this chapter.

1 SECTION 3. Section 22 of said chapter 40B, as so appearing,

2 is hereby amended by striking out the last sentence and inserting  
3 in place thereof the following sentence: – Such decision may be  
4 appealed by any aggrieved party to the supreme judicial court  
5 under the same procedures provided in section five of chapter  
6 twenty-five for review of orders of the department of public  
7 utilities, except that review shall be limited to the issues which  
8 can be reviewed by the housing appeals committee under section  
9 twenty-three of this chapter.

1 SECTION 4. Said chapter 40B is hereby further amended by  
2 striking out section 23, as so appearing, and inserting in place  
3 thereof the following section: –

4 *Section 23.* The hearing by the housing appeals committee in  
5 the department of community affairs shall be limited to the issue  
6 of whether, in the case of a denial of an application, the decision  
7 of the board of appeals was consistent with local conditions and,  
8 in the case of an approval of an application with conditions and  
9 requirements imposed, whether such conditions and require-  
10 ments make the construction, purchase or operation of such  
11 housing uneconomic and whether they are consistent with local  
12 conditions. If the committee finds, in the case of a denial, that  
13 the decision of the board of appeals was not consistent with local  
14 conditions, it shall vacate such decision and shall direct the board  
15 to issue a comprehensive permit or approval to the applicant. If  
16 the committee finds, in the case of an approval with conditions  
17 and requirements imposed, that the decision of the board makes  
18 the building or operation of such housing uneconomic and is not  
19 consistent with local conditions, it shall order such board to  
20 modify or remove any such condition or requirement so as to  
21 make the proposal no longer uneconomic and to issue any  
22 necessary permit or approval; provided, however, that the  
23 committee shall not issue any order that would permit the  
24 building or operation of such housing in accordance with  
25 standards less safe than the applicable building and site plan  
26 requirements of the Federal Housing Administration or the  
27 Massachusetts Housing Finance Agency, whichever agency is  
28 financially assisting such housing. Decisions or conditions and  
29 requirements imposed by a board of appeals that are consistent  
30 with local conditions shall not be vacated, modified or removed

31 by the committee notwithstanding that such decisions or  
32 conditions and requirements have the effect of making the  
33 applicant's proposal uneconomic.

to be investigated, and the results of the investigation to be reported to the Board of Directors. The Board of Directors is authorized to employ such persons as it may deem necessary for the purpose of conducting the investigation, and to pay such persons such salaries and expenses as it may deem reasonable. The Board of Directors is also authorized to make such other provisions as it may deem necessary for the purpose of conducting the investigation.

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