

By Mr. Klimm of Barnstable, petition of John C. Klimm for legislation to establish uniform procedures for municipal administrative boards and further regulating judicial review thereof. The Judiciary.

**The Commonwealth of Massachusetts**

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

AN ACT ESTABLISHING UNIFORM PROCEDURES FOR MUNICIPAL ADMINISTRATIVE BOARDS AND FURTHER REGULATING JUDICIAL REVIEW THEREOF.

*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. The General Laws are hereby amended by  
2 inserting after chapter 30A, the following new chapter: —

3 **CHAPTER 30A<sup>1</sup>/<sub>2</sub>.**

4 **Uniform Procedures for Municipal Administrative Boards.**

5 Section 100. Application.

6 Section 1. Actions of municipal administrative boards which  
7 are taken following procedures which conform or have conformed  
8 to the provisions of this chapter shall be presumed, upon the  
9 effective date of this chapter, to be valid, notwithstanding whether  
10 or not local provisions are adopted under this section.

11 The provisions of this chapter may be adopted by ordinance,  
12 bylaw or such other law of general municipal application as may  
13 be provided for by charter, and may be modified or adapted by  
14 such municipal legislation to conform most efficiently, effectively  
15 and fairly to local conditions, provided that the scope and method  
16 of judicial review provided for herein shall not be varied.

17 Section 2. This chapter be called "The Municipal Administra-  
18 tive Procedure Act."

19 Section 3. (a) "Affected person" means the person or persons  
20 directly benefited or injured by a proceeding of a board. In

21 licensing proceedings it means the license applicant or holder. This  
22 includes any person named or admitted as a party or entitled by  
23 constitution or statute to be so admitted.

24 (b) "Board" means any municipal board, commission, commit-  
25 tee or office authorized by law or ordinance to make rules or  
26 adjudicate individualized actions.

27 (c) "Individualized action" is a proceeding before a board in  
28 which the legal rights, duties, or privileges of specific parties are  
29 to be determined. It includes, but is not limited to, license  
30 applications, renewals, and renovation. It does not include rule-  
31 making procedure except when the proposed rule will affect fewer  
32 than six known parties.

33 (d) "Interested person" means any person with a significant  
34 interest in a proceeding. This need not be a property interest.

35 (e) "Person" means any individual, partnership, corporation,  
36 association, or public or private organization of any character,  
37 other than the board engaged in the particular rule-making,  
38 declaratory ruling, or individualized action.

39 (f) "Rule" includes the whole or any part of every rule,  
40 regulation, standard or other requirement of general application  
41 and future effect adopted by a board to implement or interpret  
42 the law enforced or administered by it, but does not include:

43 (1) advisory rulings issued under section 206 of this Municipal  
44 Administrative Procedure Act; or

45 (2) rules concerning only the internal management or discipline  
46 of any board, and not directly affecting the rights of, or the  
47 procedures available to, the public or that portion of the public  
48 affected by the board's activities; or

49 (3) decisions issued in individualized actions; or

50 (4) interpretative statements and statements of general policy.

51 Section 4. Each board, in addition to fulfilling other rule-  
52 making requirements imposed by law, shall adopt rules governing  
53 the procedures prescribed by this Administrative Procedure Act.  
54 Such rules shall include rules of practice before the board, together  
55 with forms and instructions.

56 Section 5. Prior to the adoption or amendment of any rule as  
57 to which a hearing is required by any provision of the General  
58 Laws or [town][city] law or any other rule the violation of which  
59 is punishable by fine or imprisonment, except a rule of board

60 practice or procedure a board shall comply with the following  
61 procedure:

62 (a) The board shall, within the time specified by any provision  
63 of the General Laws or [town] [city] law, or, if no time is specified,  
64 then at least 14 days prior to the public hearing:

65 (1) publish notice of such hearing in such manner as is specified  
66 by any provision of the General Laws or [town] [city] law, or,  
67 if none is specified, then in such newspapers, and, where  
68 appropriate, in such trade, industry, or professional publications  
69 as the board may select; and

70 (2) notify any person specified by any provision of the General  
71 Laws or [town] [city] law.

72 (b) The public hearing shall comply with any requirements  
73 imposed by law, but shall not be subject to the provisions of this  
74 Municipal Administrative Procedure Act governing individual-  
75 ized actions.

76 (c) For the purposes of this section, the notice shall:

77 (1) refer to the statutory authority under which the action is  
78 proposed;

79 (2) give the time and place of the public hearing;

80 (3) either state the express terms or describe the substance of  
81 the proposed regulation or amendment, or state the subjects and  
82 issues involved; and

83 (4) include any additional matter required by any provision of  
84 the General Laws or [town] [city] law.

85 (d) This section does not relieve any board from compliance  
86 with any provision of the General Laws requiring that its  
87 regulations be approved by designated persons or bodies before  
88 they become effective.

89 Section 6. Prior to the adoption, amendment, or repeal of any  
90 rule other than those subject to section 5 of this Municipal  
91 Administrative Procedure Act, a board shall comply with the  
92 following procedure:

93 (a) The board shall, within the time specified by any provision  
94 of the General Laws or [town] [city] law, or, if no time is specified,  
95 then at least 14 days prior to its proposed action:

96 (1) publish notice of its proposed action in such manner as is  
97 specified by any provision of the General Laws or [town] [city]  
98 law, or, if no manner is specified, then in such newspapers, and

99 where appropriate, in such trade, industry, or professional  
100 publications as the board may select; and

101 (2) notify any person specified by any provision of the General  
102 laws or [town] [city] law.

103 (b) The board shall afford interested persons an opportunity  
104 to present, orally or in writing, data, views, or arguments in regard  
105 to the proposed action. If the board finds that oral presentation  
106 is unnecessary or impracticable, it may require that presentation  
107 be made in writing.

108 (c) For the purposes of this section, the notice shall:

109 (1) refer to the statutory authority under which the action is  
110 proposed;

111 (2) give the time and place of any public hearing, or state the  
112 manner in which data, views, or arguments may be submitted to  
113 the board by any interested person;

114 (3) either state the express terms or describe the substance of  
115 the proposed action, or state the subjects and issues involved; and

116 (4) include any additional matter required by any provision of  
117 the General Laws or [town] [city] law.

118 (d) This section does not relieve any board from compliance  
119 with any provision of the General Laws requiring that its  
120 regulations be approved by designated persons or bodies before  
121 they become effective.

122 Section 7. Any interested person may petition a board request-  
123 ing the adoption, amendment, or repeal of any rule. Each board  
124 shall prescribe by rule the procedure for the submission,  
125 consideration, and disposition of such petitions. Within 60 days  
126 after the submission of a petition, the board shall either deny the  
127 petition in writing (stating its reasons for the denial), or initiate  
128 rule-making proceedings concerning such petition in accordance  
129 with sections 5 or 6 of this Municipal Administrative Procedure  
130 Act.

131 Section 8. (a) All boards shall file with the municipal clerk a  
132 certified copy of each rule adopted by it. A rule shall not become  
133 effective until after such filing.

134 (b) The municipal clerk shall keep copies of the rules which  
135 boards have adopted and filed. They shall be maintained in  
136 electronic form and in paper form, compiled and indexed to  
137 permit easy reference, as appendices to this administrative code.

138 They shall be available for inspection by the public at the  
139 municipal clerk's office. Copies of these rules shall be provided  
140 for persons requesting such copies upon payment of reproduction  
141 costs.

142 (c) If the municipal chief executive or administrative official  
143 determines that a rule is unconstitutional or beyond the authority  
144 of the board to adopt, or that its enforcement would subject the  
145 [town] [city] to damages or other expense in excess of either the  
146 benefit to be derived from its enforcement or the [town] [city]'s  
147 ability to pay, he or she may disapprove the rule, giving his reasons  
148 in writing, which shall be recorded as provided under para-  
149 graph (b). After such disapproval, the rule shall be of no effect.

150 Section 9. The validity of any rule may be determined upon  
151 petition for a declaratory judgment thereon addressed to the  
152 superior court when it appears that the rule, or its threatened  
153 application, interferes with or impairs, or threatens to interfere  
154 with or impair, the legal rights or privileges of the petitioner. The  
155 board shall be made a party to the proceeding. The declaratory  
156 judgment may not be rendered unless the petitioner has first  
157 requested the board to pass upon the validity of the rule in  
158 question; the board shall give its decision on the validity of a rule  
159 in writing. The board or the court shall declare the rule invalid  
160 if it finds that it violates constitutional provisions or exceeds the  
161 statutory authority of the board or was adopted without  
162 compliance with statutory rule-making procedures.

163 Section 10. On petition of any interested person, any board  
164 may issue a declaratory order with respect to the applicability to  
165 any person, property, or state of facts of any rule or statute  
166 enforceable by it. A declaratory order if issued after argument and  
167 stated to be binding, is binding between the board and the  
168 petitioner on the state of facts alleged, unless it is altered or set  
169 aside by a court. Such an order is subject to review in the superior  
170 court in the manner hereinafter provided for the review of  
171 decisions in individualized actions. Each board shall prescribe by  
172 rule the form for such petitions and the procedure for their  
173 submission, consideration, and disposition.

174 Section 11. Upon receipt of a request for an individualized  
175 action the board shall conduct a preliminary investigation,  
176 including in that investigation material in an application form,  
177 if one is involved, its files, and information known to it or its staff.

178 Upon the basis of the information so obtained the board shall  
179 make findings of fact and formulate a preliminary order.  
180 However, if the board feels that it lacks adequate facts or even  
181 a preliminary order, it may order a hearing immediately by  
182 complying with section 14.

183 Section 12. The preliminary order, if there is one, and the  
184 accompanying findings of fact shall be delivered to all affected  
185 persons with notification that if no hearing is requested, the order  
186 shall become final after 10 days. If there is no known person  
187 adversely affected, and the decision is that no action be taken,  
188 the board may file its order with the town clerk. If the board  
189 concludes that there are public interests involved in its  
190 determination, and its preliminary order is in favor of the affected  
191 person, it may publish its preliminary order in the manner similar  
192 to that prescribed in section 5.

193 Section 13. An affected person may request a hearing by  
194 notifying the board of his objection to the preliminary order. This  
195 objection shall indicate the findings of fact to which objection is  
196 made, if any, or the grounds upon which the person affected  
197 alleges the insufficiency of the findings to support the order, or  
198 of the authority of the board to issue such an order. In addition,  
199 such a person may petition for a change in the rules adopted by  
200 the board by complying with section 7.

201 Section 14. (a) If it is requested by an affected person in the  
202 manner provided in the preceding section, the board shall order  
203 the type of hearing appropriate for the determination of the  
204 controversy. It may refuse the request only if it finds that the  
205 request is made in bad faith. In the absence of such a request the  
206 board may order a hearing where the public interest so requires.  
207 In either case all affected persons shall be notified of the scheduled  
208 hearing and the issues that have been raised. When appropriate  
209 such notice shall also be published in the manner provided in  
210 section 5.

211 (b) A hearing on the sufficiency of the findings to support the  
212 order, or the authority of the board to issue such an order may  
213 be limited to oral argument with or without briefs.

214 Section 15. The board shall prepare an official record, which  
215 shall include testimony and exhibits in each individualized action,

216 but it shall not be necessary to transcribe stenographic or short-  
217 hand notes, or tapes, unless requested for purposes of rehearing  
218 or court review.

219 Section 16. (a) Boards may admit and give probative effect to  
220 evidence which possesses probative value commonly accepted by  
221 reasonably prudent men in the conduct of their affairs. They shall  
222 give effect to the rules of privilege recognized by law. They may  
223 exclude incompetent, irrelevant, immaterial, and unduly repeti-  
224 tious evidence.

225 (b) All evidence, including records and documents in the  
226 possession of the board of which it desires to avail itself, shall be  
227 offered and made a part of the record in the case, and no other  
228 factual information or evidence shall be considered in the  
229 determination of the action. Documentary evidence may be  
230 received in the form of copies or excerpts, or by incorporation  
231 by reference.

232 (c) Every party shall have the right of cross-examination of  
233 witnesses who testify, and shall have the right to submit rebuttal  
234 evidence.

235 (d) Boards may take notice of judicially-cognizable facts and  
236 in addition may take notice of general, technical, or scientific facts  
237 within their specialized knowledge in the evaluation of the  
238 evidence presented to them. Parties shall be notified either before  
239 or during hearing, or by reference in preliminary reports or  
240 otherwise, of the material so noticed, and they shall be afforded  
241 an opportunity to contest the facts so noticed. Boards may utilize  
242 their experience, technical competence, and specialized knowl-  
243 edge in the evaluation of the evidence presented to them.

244 Section 17. A board may take emergency action to be effective  
245 immediately:

246 (a) Where necessary for the public health or welfare; but subject  
247 to change after a hearing, if requested, to be held at the earliest  
248 convenient time in no case later than 30 days after the action; or

249 (b) In other cases where the necessary delay would render the  
250 action useless, and where there are no substantial adverse interests  
251 affected, except that upon the timely good faith objection of an  
252 interested person sections 11, 12, 13 and 14 procedure shall be-  
253 come mandatory.

254 Section 18. (a) Any affected or interested person, aggrieved by  
255 a final order in an individualized action, whether such order is  
256 affirmative or negative in form, is entitled to judicial review  
257 thereof under this Municipal Administrative Procedure Act.

258 (b) Proceedings for review shall be instituted by filing a petition  
259 in the superior court within 60 days after the order becomes final.  
260 Copies of the petition shall be served upon the board and all other  
261 parties of record. The court, in its discretion, may permit other  
262 parties to intervene.

263 (c) The filing of the petition shall not stay enforcement of the  
264 board's order; but the board may do so, or the reviewing court  
265 may order a stay upon such terms as it deems proper. If the same  
266 facts give rise to a proceeding in the nature of an appeal to another  
267 administrative agency, from which a separate review by the court  
268 is allowed under chapter 30A or otherwise, the court may stay  
269 the appeal allowed by this section and, upon determination of the  
270 separate administrative appeal, consolidate the matters for con-  
271 current determination, having due regard for judicial and admini-  
272 strative efficiency.

273 (d) If the order was made after a hearing, within 30 days after  
274 service of the petition, or within such further time as the court  
275 may allow, the board shall transmit to the reviewing court the  
276 original or a certified copy of the entire record of the proceeding  
277 under review; but, by stipulation of all parties to the review  
278 proceeding, the record may be shortened. Any party unreasonably  
279 refusing to stipulate to a limitation of the record may be taxed  
280 by the court for the additional costs. The court may require or  
281 permit subsequent corrections or additions to the record when  
282 deemed desirable.

283 (e) If there was no hearing, within 30 days after service of the  
284 petition or within such further time as the court may allow, the  
285 board shall transmit the findings of fact and the order and a list  
286 of those to whom they were sent. In such cases the court shall  
287 either affirm the board's decision or, if it finds that it was made  
288 in conjunction with unlawful or unconstitutional procedure, it  
289 shall remand the case to the board for further proceedings in  
290 compliance with this Municipal Administrative Procedure Act,  
291 unless justice and expediency require the court to take evidence  
292 and make a determination itself.

293 (f) If application is made to the court for leave to present  
294 additional evidence on the issues in the case, and it is shown to  
295 the satisfaction of the court that the additional evidence is material  
296 and that there were good reasons for the failure to present it in  
297 the proceeding before the board, the court may order that the  
298 additional evidence be taken before the court or before the board,  
299 upon such conditions as the court deems proper. The board may  
300 modify its findings and order by reason of the additional evidence  
301 and shall file with the reviewing court, to become a part of the  
302 record, the additional evidence, together with any modified  
303 findings or order.

304 (g) Review shall be conducted by the court without a jury and  
305 shall be confined to the record, except that in cases of alleged  
306 irregularities in procedure before the board, not shown in the  
307 record, testimony thereon may be taken in court. The court shall,  
308 upon request, hear oral argument and receive written briefs.

309 (h) The court may affirm the order of the board, or remand  
310 the case for further proceedings; or it may reverse or modify the  
311 decision, if the substantial rights of the petitioners may have been  
312 prejudiced because the administrative findings, inferences,  
313 conclusions, or decisions are:

- 314 (1) in violation of constitutional provisions; or
- 315 (2) in excess of the statutory authority or jurisdiction of the  
316 board; or
- 317 (3) made in conjunction with unlawful procedure; or
- 318 (4) affected by other error of law; or
- 319 (5) unsupported by substantial evidence in view of the entire  
320 record as submitted; or
- 321 (6) arbitrary or capricious.

322 In making the foregoing determinations, the court shall give due  
323 weight to the experience, technical competence, and specialized  
324 knowledge of the board, as well as to the discretionary authority  
325 conferred upon it.

326 (i) If the court remands a case to a board for further  
327 proceedings, the court may specify the nature, rules and timetable  
328 for those proceedings; otherwise, the board shall act reasonably  
329 and with the due diligence to redetermine the matter.

330 Section 19. Each board shall transmit the original of all  
331 elements, including exhibits, recordings and electronic data, of the

332 records of individualized proceedings before it to the municipal  
333 clerk, who shall keep them safely. The municipal clerk shall ensure  
334 that any person requesting the same shall promptly, upon the  
335 payment of the costs of reproduction, be provided with a copy  
336 thereof, attested if so requested, but said originals shall not be  
337 yielded up except upon the order of a court or the municipal  
338 attorney. Such records shall be maintained in a manner similar  
339 to that provided under section 204, relating to rule-making  
340 proceedings.

1 SECTION 2. Chapter 40A of the General Laws is hereby  
2 amended by striking out section 17, as amended by section 2 of  
3 chapter 649 of the acts of 1989, and inserting in place thereof the  
4 following section: —

5 Section 17. Judicial review of the actions of municipal boards  
6 under this chapter shall be available under procedures conforming  
7 to chapter 30A½.

1 SECTION 3. Chapter 41 of the General Laws is hereby  
2 amended by striking out section 81BB, as appearing in the 1988  
3 Official Edition, and inserting in place thereof the following  
4 section: —

5 Section 81BB. Judicial review of the actions of municipal  
6 boards under the subdivision control law shall be available under  
7 procedures conforming to chapter 30A½.

1 SECTION 4. Chapter 138 of the General Laws is hereby  
2 amended by striking out section 67, as appearing in the 1988  
3 Official Edition and inserting in place thereof the following  
4 section: —

5 Section 67. Any applicant for a license who is aggrieved by the  
6 action of the local licensing authorities in refusing to grant the  
7 same, or by their failure to act within the period of thirty days  
8 limited by section sixteen B, or any person who is aggrieved by  
9 the action of such authorities in modifying, suspending, cancel-  
10 ling, revoking or declaring forfeited the same, may appeal  
11 therefrom to the commission. The commission shall conduct the  
12 appeal as a reviewing court under the provisions of section 308  
13 of chapter 30A½, insofar as they are apt. The commission shall

14 not in any event order a license to be issued to any applicant except  
15 after said applicant's application for license has first been granted  
16 by the local authorities.

17 Upon the petition of twenty-five persons who are taxpayers of  
18 the city or town in which a license has been granted by such  
19 authorities, or who are registered voters in the voting precinct or  
20 district wherein the license premises are situated, the commission  
21 shall, or upon its own initiative the commission may, investigate  
22 the granting of such a license or the conduct of the business being  
23 done thereunder, and shall, after a hearing, modify, suspend,  
24 revoke or cancel such license if, in its opinion, circumstances  
25 warrant.

26 If the local licensing authorities fail to suspend, revoke, cancel  
27 or declare forfeited a license or to perform any other disciplinary  
28 act when lawfully ordered so to do by the commission upon appeal  
29 or otherwise, within such reasonable time as it may prescribe, the  
30 commission may itself revoke such license or perform such act,  
31 with the same force and effect as if issued or performed by the  
32 local licensing authorities, but no license shall be issued by the  
33 commission except in ratification of a prior issuance to the same  
34 party by the local authorities.

35 Hearings by the commission on appeals as required by the  
36 provisions of this section may be held in the discretion of the  
37 commission when required by public convenience or shall be held  
38 upon written request of twenty-five persons who are taxpayers of  
39 the city or town in which the license is intended to be exercised,  
40 in the nearest of the following cities or towns to the city or town  
41 in which the license is intended to be exercised: — Pittsfield,  
42 Greenfield, Springfield, Worcester, Fitchburg, Boston, Barnsta-  
43 ble, New Bedford, Brockton, Lowell or Salem. Said request shall  
44 be made within ten days of service of the petition commencing  
45 the appeal.

