

[[Note: This legislation was originally submitted by Governor Romney in March 2005 as H603. . It was refiled in June 2005 as a separate bill, H4170. Section 4 in this bill replaces the entire current Chapter 43D text. Note that the "Section" numbers referred to in Section 4 below are sections in Chapter 43D - not in H4170.]]

## House Bill 4170

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2005 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND TO PROMOTE EXPEDITED PERMITTING IN THE COMMONWEALTH

**SECTION 1.** To create and provide for programs that encourage expedited permitting in the Commonwealth, the sums set forth in section 2 for the several purposes and subject to the conditions specified in this act and are hereby made available subject to the provisions of law regulating the disbursement of public funds and approval thereof.

**SECTION 2.** To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2005, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein or in said appropriation acts, for the several purposes and subject to the conditions specified herein or in said appropriation acts, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2005; provided, that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items; and provided further, that all funds appropriated in this section shall be available for expenditure through June 30, 2006.

EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE  
*Division of Administrative Law Appeals*

1110-1000 .....\$250,000

**SECTION 2A.** To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2005; provided, that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items; and provided further, that all funds appropriated in this section shall be available for expenditure through June 30, 2006.

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
*Office of the Secretary*

2020-0101 For the office of technical assistance to provide technical assistance and c

EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT  
*Office of the Secretary*

7002-0013 For the streamlining of state and local permitting processes; provided, that not less than \$4,500,000 shall be expended for technical assistance grants as established in section 3(b) of chapter 43D of the General Laws to be administered by the interagency permitting board; provided that not less than \$400,000 shall be expended for state permit

evaluation and to overhaul state agency services for streamlined and expedited permitting at the direction of the interagency permitting board; provided further, that such analysis and evaluation shall include the executive office of environmental affairs, the executive office of public safety, the executive office of transportation, and the executive office economic development; and provided further, that not less than \$1,200,000 shall be expended by the Massachusetts Development Finance Agency to work with local governments to promote and implement the provisions of chapter 43D of the General Laws to foster job creation efforts within the municipality and region.....\$6,100,000

*Department of Business and Technology*

7007-0310 For the Massachusetts business resource team to manage and market an online inventory of priority development properties and other development sites as established in chapter 43D of the General Laws .....\$1,100,000

**[[Section 3 - Interagency Permitting Board]]**

**SECTION 3.** Chapter 23A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting at the end thereof the following new section:-

Section 62. There shall be an **interagency permitting board** within the department of economic development. The members of the board shall be the secretary of economic development, the secretary of transportation, the secretary of environmental affairs, the secretary of public safety, the chair of the development coordinating council, and the executive director of the Massachusetts Development Finance Agency or their designees. Four members shall be a quorum for the transaction of business. At the direction of the secretary of economic development, the board shall meet no less than 8 times a year, and shall monitor the development of priority development sites as provided for in chapter 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency.

**[[Section 4 - Expedited Permitting]]**

**SECTION 4.** Chapter 43D of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out the chapter in its entirety and inserting in place thereof the following:-

**CHAPTER 43D  
EXPEDITED PERMITTING**

Section 1. Notwithstanding any general or special law, charter provision, by-law or ordinance to the contrary this chapter shall apply upon its acceptance by any city or town.

**[[Terminology]]**

Section 2. For the purposes of this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"**Governing body**", in a city having a Plan D or Plan E charter the city manager and the city council and in any other city the mayor and city council, and in towns the board of selectmen.

**"Interagency Permitting Board"**, the board, as described in section 62 of chapter 23A, established to review and approve or deny municipal priority development site proposals and to grant and administer technical assistance grants.

**"Issuing authority"**, a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

**"Permit"**, a permit formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use or development of land, buildings, or structures required by any issuing authority including but not limited to those under statutory authorities contained in chapter 40A, sections 81A to 81J, inclusive, and sections 81X to 81GG, inclusive, of chapter 41, sections 40 and 40A of chapter 131, sections 26 to 32, inclusive, of chapter 111, chapter 40C, sections 13 and 14 of chapter 148, chapter 772 of the acts of 1975, or otherwise under state law or local by-law or ordinance, and all associated regulations, bylaws and rules, but not including building permits or approvals pursuant to sections 810 to 81W, inclusive, of chapter 41. "Permit" shall not include the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipal office of permit coordination or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

**"Priority Development site"**, a privately or publicly owned property that is (1) commercially or industrially zoned, (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures, and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site.

**"Secretary"**, the secretary of the executive office of economic development.

**"Technical Review team"**, an informal working group consisting of representatives of the various issuing authorities designed by the head of their issuing authority to review requests submitted under this chapter. The technical review team shall not include members of the zoning board of appeals.

### **[[Designation of Priority Development Site]]**

#### Section 3.

(a) For a property to receive a designation as a **priority development site**, the governing body must file a **formal proposal** with the board. The proposal shall include: (1) a detailed description of the property, (2) good faith commitment to comply with the provisions of this chapter, (3) written authorization of the property owner, and (4) at the discretion of the governing body, a request for a technical assistance grant.

### **[[Uses of Grant Monies]]**

(b) All requests for a technical assistance grant, shall include a detailed description of how the grant will be used and shall be submitted with the formal proposal as described in subsection (a). The grants shall be used to implement the requirements of this chapter, which shall include but not limited to, professional staffing assistance, local government reorganization, and consulting services. The board shall review and determine eligibility of such proposals and approve requests within 60 days of receipt of such proposals. In special circumstances where a specific and originally unforeseen need

can be demonstrated, the governing body may be eligible for an additional technical assistance grant if approved by the board and the secretary.

**[[Changes to Local Permitting Process and Rules]]**

Section 4. Within 120 days of the acceptance of this chapter the governing body shall implement the following:

(a) appoint a **single point of contact** to serve as the primary municipal liaison for all issue relating to the provisions of this chapter.

(b) **amend rules and regulations on permit issuance** to conform to this chapter,

(c) along with the issuing authority, collect and ensure the availability of all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit.

(d) establish a procedure whereby the governing body shall **determine all permits, reviews and predevelopment reviews required** for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities and a procedure for notifying the applicant.

(e) establish a procedure, following the notification of the required submissions for review as set forth in subsection (d) of this section, for determining if all the materials required for the review of the project has been completed.

**[[180 days to complete]]**

Section 5. (a) Priority development permit reviews and final decisions shall be completed within 180 days subject to the extension herein. The said time period shall begin the day after the issuance of the notice that the application materials are complete pursuant to subsection (e) of section 4. The governing body shall notify the applicant in writing within 20 business days from receipt of the completed form of additional information needed or requirements that it may have. The governing body may provide for pre-application conferences to facilitate this process.

(b) The resubmission of the application or the submission of such additional information required by the governing body shall commence a new 30-day period for review of the additional information.

(c) If, at any time, an issuing authority determines that a permit or other predevelopment review is required which it did not previously identify, it shall immediately notify the applicant by certified mail and shall where public notice and comment or hearings are not required complete action on the application filed for the previously unidentified permit within 30 days of receipt of the completed application or not later than the latest required decision date for a pending permit, whichever is later. Where public notice and comment or hearing are required for the previously unidentified permit, the required action date shall be not later than 30 days from the later of the close of the hearing or comment period, which shall be scheduled to commence as quickly as publication allows. The failure of the governing body to notify an applicant of the requirement of a public

hearing or comment period shall not constitute a waiver of said requirement.

**[[Advisory Review by Technical Review Team]]**

Section 6. In accordance with the provisions of this chapter, the governing body:

(a) may establish an informal procedure to allow permit applicants to obtain **advisory review by a technical review team** of any issue of law, policy, procedure, or classification that the applicant claims is in dispute between the applicant and the issuing authority which has affected or will affect the ability of the applicant to obtain timely review of the permit application. Procedures shall provide for a filing a request for review by the applicant, representation by the issuing authority on the technical review team, and a period not to exceed 30 days for issuance of a decision. Use of this procedure shall toll the review time periods. An advisory determination or ruling made pursuant to a procedure established in this section shall not constitute a decision or final action and shall not be subject to any right of administrative or judicial review;

(b) may establish an additional and **separate fee**, in addition to any fees that may be assessed by an issuing authority in order to carry out its duties under any provision of this chapter, and may deposit the fees in a special account to be maintained by the treasurer. The special account, including any accrued interest shall be expended at the direction of the governing body, without further appropriation; provided, however, that the funds shall be expended only in carrying out its responsibilities under this chapter

**[[Automatic Approval after 180 Days]]**

Section 7. **Failure by any issuing authority to take final action** on a permit or approval within said 180-day period or extended time, if applicable, **shall be deemed a grant of the relief** requested of that authority. In that event, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to said grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings and all persons entitled to such notice of hearing in connection with the application.

**[[Incomplete or False Applications]]**

Section 8. The said grant shall not occur where (1) the governing body has made a timely determination that the application is not complete in accordance with its requirements and notified the applicant as set forth herein and the applicant has not made a timely response to complete the application; (2) the governing body has determined that the final application contained false or misleading information; or (3) the governing body has determined that substantial changes to the project affect the information required to process the permit application have occurred since the filing of the application.

**[[Extension with Applicant Concurrence]]**

Section 9. The 180 day time period may be waived or extended for good cause upon **written request of the applicant** with the **consent of the governing body** or upon **written request of the issuing authority** with the **consent of the applicant**. The said 180 day period may be extended for up to 30 days by the governing body in the event an additional

permit or other predevelopment review is required in accordance with section 5 (c); provided however, that the requirement for the previously unidentified permit or review has been determined no less than 150 days after the issuance of the notice of completeness. The 180 day time period shall be extended when the issuing authority determines either (1) that action by another federal, state or municipal government agency is required before the issuing authority may act; (2) that judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or (3) that enforcement proceedings that could result in revocation of an existing permit for that facility or activity and denial of the application have been commenced. In such circumstances, the issuing authority must provide written notification to the secretary. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, and shall complete its decision within the time period specified in this section, beginning the day after the notice is issued. An issuing authority **may not use lack of time for review as a basis for denial of a permit** if the applicant has provided a complete application and met all other obligations in accordance with this chapter.

### **[[Appeals to Div. of Administrative Law]]**

#### Section 10.

(a) Appeals from issuing authority decisions or from a grant by operation of law must be filed within 20 days after the last such individual permitting decision has been rendered or within 20 days after the conclusion of the 180 day period as set forth in Section 5 A, whichever is later. The 180 day period shall be increased by the number days in any extension granted under this chapter.

(b) A person aggrieved by a final decision of any issuing authority, or by the failure of such authority to take final action concerning any such application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the **division of administrative law** appeals by bringing an action within 20 days after a written decision was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed **simultaneously** and shall be **consolidated** for purposes of hearing and decision. Nothing in this section shall apply to appeals pursuant to sections 40 and 40A of chapter 131, which shall continue to be appealed in accordance with said chapter, chapter 30A and applicable regulations.

(c) When hearing appeals hereunder, the said division shall revise its rules, procedures and regulations to the extent necessary to accord with the requirements of this chapter.

(d) The said division shall render a final written decision within **90 days** of the receipt of the appeal. Thereafter, an aggrieved party may appeal to the land court department by bringing an action within 20 days after the said division has rendered a final decision.

### **[[Transfer of Permits]]**

#### Section 11.

(a) Permits shall not transfer automatically to successors in title, unless the permit expressly allows the transfer without the approval of the issuing authority.

(b) Issuing authorities having substantive jurisdiction over permit issuance may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the same procedures and timelines as specified in conjunction with this chapter.

(c) Issuing authorities shall make every reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. An issuing authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or additional information is required by the issuing authority in order to issue a decision. If additional information is required, the issuing authority shall inform an applicant within 20 business days after receipt of the required additional information whether the modification is approved or denied or that additional information is still required by the issuing authority in order to render a decision. In cases in which the issuing authority determines that a requested modification is substantial, the original review period for permit categories as set forth in section 5 shall apply.

(d) Permits issued pursuant to this chapter **shall expire five years** from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of **construction of one building shall preserve the permit validity**. Changes in the law subsequent to the issuance of permits based upon the priority proposal shall not invalidate the permits or review certificates. Nothing in this section shall limit the effectiveness of section 6 of chapter 40A.

#### **[[Benefits of Designating a Priority Development Site]]**

Section 12. A municipality that designates a priority development site shall be eligible for the following:

- (a) **priority consideration** for community development action grants, and public works economic development grants;
- (b) **priority consideration** for other state resources such as quasi-public financing and training programs;
- (c) **brownfields** remediation assistance;
- (d) enhanced **marketing** by the Massachusetts office of business development; and
- (e) **technical assistance** provided by the Massachusetts Development Finance Agency.

#### **[[Designation of Priority Development Site]]**

Section 13. Any required reviews established under sections 61 to 62H, inclusive, of chapter 30 or sections 26 to 27C, inclusive, of chapter 9 shall be conducted **concurrently** and shall conclude within **120-days** of a state determination of completeness of required review materials, as shall be established by the executive office of environmental affairs. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with this section. In the event an applicant fails to comply with all relevant time frames, the time shall be tolled until the applicant files the required documents.

Section 14. Nothing in this chapter shall be construed to alter the substantive jurisdictional authority of issuing authorities.

Section 15. The secretary shall promulgate such rules and regulations as are necessary to implement the purposes of this chapter.

**[[Section 3 - Martha's Vineyard and Cape Cod Provisions]]**

**SECTION 5.** If a referral of a permit application to the **Martha's Vineyard** commission as described in chapter 831 of the acts of 1977 or to the **Cape Cod commission** as described in chapter 716 of the acts of 1989, is required or accepted pursuant to either of said acts, the 180 day time period as described in this act shall be suspended upon receipt of a referral or acceptance of a discretionary referral. The 180 day time period shall recommence at the completion of the regional commission's review; provided however that if either commission denies a regional permit on a priority development site, section 7 of this act shall not apply and the issuing authority upon receipt of the denial notice shall issue a denial forthwith.

**SECTION 6.** This act shall take effect upon passage.