



## *Commonwealth of Massachusetts*

### **Joint Committee on Municipalities and Regional Government**

#### **Comprehensive Land Use Reform and Partnership Act**

#### **Description of Sections**

**May 18, 2010**

#### **Overview of the bill:**

The bill proposes changes to three existing sections of Massachusetts General Law and creates one new chapter.

- Offers clarity and updating of Chapter 40A (The Zoning Act), Section 81D of Chapter 41 (the master plan) and portions of Chapter 41 (The Subdivision Control Law).
- Creates a new statute in the Massachusetts General Laws, Chapter 40U, that offers additional powers, practices, and preferences to communities that “opt-in” to certain additional performance standards consistent with the state’s sustainable development principles

#### **Specific Provisions For All Communities.**

- **Section 1. The Zoning Act (Chapter 40A)**

The bill reorganizes and consolidates Chapter 40A (the Zoning Act) going from 17 to 11 sections. Like topics are grouped for easier access. Presentation is in outline format with the use of reader-friendly headings. The bill leaves significant portions of the state’s zoning laws intact, while also providing substantive zoning updates to all communities. Among these changes are:

- Construction and Purposes. The bill adds new language to clarify the construction and purposes of zoning in Massachusetts. The bill clearly reiterates the home rule powers of cities and towns -- while recognizing the legislature’s role in limiting the exercise of home rule authority in order to promote overriding state interests. The bill recognizes that legitimate property rights and constitutional principles should not be violated by local land use regulations.
- Consistency. The bill requires that zoning ordinances and by-laws not be inconsistent with an adopted master plan under c. 41, § 81D. A seven year grace period is available to comply, and a city or town without a plan may instead adopt an existing regional plan.
- Mansionization. Eliminates the prohibition on the regulation of maximum interior area of a single family dwelling
- Exclusionary practices. A bar on exclusionary zoning practices has been added.
- Vesting. The complete zoning freeze for subdivision plans has been modified to also include building and special permits, and standardized so all three approvals are treated similarly. Thus, a development project proposed in a building permit, special permit, or definitive

subdivision plan duly applied for prior to the date of adoption of a zoning change will be governed by the zoning then in effect for a period of 2, 3, or 8 years, respectively. A minor subdivision will be treated as a definitive subdivision plan under this section, but with a 3 year zoning protection period.

- Adoption of zoning bylaws. The two-thirds super majority vote remains the default to adopt or amend zoning ordinances or by-laws, but a lesser majority vote now may be prescribed in a zoning ordinance or by-law. Such a reduction in vote majority must itself be adopted by a two-thirds vote of the local legislative body, and the change shall not become effective until 6 months have elapsed after the vote.
- Special Permits. The required vote majority necessary to approve a special permit now may be reduced by ordinance or by-law. The effective duration of a special permit is set at no shorter than three years (which matches the period of vested rights for a special permit described above). Finally, a process for the extension of a special permit is established.
- Site Plan Review. A new sub-section places this common zoning approval within the Zoning Act for the first time, affirming that site plan review is a process for uses allowed by-right, distinct from discretionary uses subject to a special permit. A time limit of 95 days is set for the review, subject to mutually-agreed-upon extensions. Public hearings are optional. A site plan shall be approved if it meets the three stated criteria, although reasonable conditions and limitations may be imposed. An approved site plan shall have an effective duration of no shorter than two years. Consultant fees to assist the board in its review may be assessed of an applicant. A site plan, when required in conjunction with a discretionary review, such as special permit, shall be integrated into the processing of the application for the special permit and not made the subject of a separate proceeding.
- Variances. The criteria for granting variances under the old statute were so narrowly drawn that a lawful variance was difficult to grant in Massachusetts. Consequently, some communities that adhered to the statute granted few if any variances, while others, ignoring the statute out of perceived necessity, granted many variances according to no set standards. This subsection seeks to find a middle ground by setting reasonable criteria for variances while still maintaining a community's discretion to condition or deny a variance. The effective life of a variance is extended from one to two years before it lapses if not used, and the permissible extension increases from six months to one year.
- Standard Procedures. Standard procedures for zoning applications, hearings, and decisions were organized and clarified from various sections of the old c. 40A. Unless otherwise indicated elsewhere in the Zoning Act these are the default procedures to be followed.
- Inclusionary Zoning. The bill provides parameters for zoning measures that require the creation of affordable housing in development projects. It encompasses the wide array of such techniques used currently in the state. Subject to granting authority approval, off-site units, land dedication, or funds may also be provided in lieu of on-site dwelling units. Dedicated accounts may be set up for this purpose. Any dwelling units created under this statute must be price-restricted for no less than 30 years. Inclusionary zoning ordinances or by-laws may require all or a portion of the units created be eligible for inclusion on the community's Subsidized Housing Inventory.
- Development impact fee. The bill establishes that development impact fees are permissible if in accordance with this subsection, which is based upon a number of in-state and out-of-state models. Communities following the requirements of this subsection will have defensible impact fee ordinances or by-laws that are less prone to being overturned. Public capital facilities for which impact fees may be assessed are listed. Municipal expenses ineligible for the application of impact fees, such as maintenance or salaries, are also listed.

Affordable housing subject to a restriction on sale price or rent is exempt from being assessed an impact fee. The planning and study prerequisites to the adoption of an impact fee ordinance or bylaw are detailed, as is fiscal administration of an impact fee program.

- Dispute Resolution. This new subsection sets out the procedure for a voluntary land use dispute resolution process utilizing a neutral facilitator to help resolve conflicts stemming from an application for a land use permit.
- Mediation of land use appeals. A voluntary mediation process is allowed which stays an appeal for at least 180 days, and longer if extended.

- **Section 2. Master Plans (amends Chapter 41 Section 81D)**

The bill proposes significant amendments to the section of law that requires municipalities to plan for their community's future. Specifically, the revised Section:

- Reiterates the existing requirement for communities to create a master plan, and states that plans should be updated or extended every ten years.
- Reduces the number of required planning elements from nine to five as follows: goals and policies, housing, natural resources and energy, land use and zoning, and implementation.
- Articulates six other, optional elements which may be added at the community's discretion; certain of which are required in order to adopt a development impact fee ordinance or bylaw or to opt-in to the provisions of Chapter 40U (see below).
- Requires a self assessment of consistency with an adopted regional plan.
- Authorizes "partnership plans" described in new Section 40U.
- Requires final adoption of a master plan and component by the local legislative body by a simple majority vote .
- Requires a public hearing prior to vote on the master plan.
- Encourages, but does not require certification by the regional planning agencies, unless the master plan includes a partnership plan, in which case certification is required.

- **Sections 3-18. Subdivision Control Law (amends Chapter 41)**

The bill makes selected amendments to the Subdivision Control Law:

- Minor subdivisions. Allows, by local option, the replacement of approval not required ("ANR") with a carefully crafted minor subdivision law.
- Minor Lot Line Changes. Establishes a new, streamlined method for making minor lot line changes.
- Parks and Playgrounds. Allows towns to require that parks and playgrounds not exceeding 5% of the subdivision's area within the new neighborhood.
- Consistency. Requires subdivision regulations not be inconsistent with master plans.
- Roadway Width. Establishes a presumption that requirements for roadway widths of greater than 24 feet are excessive.

- Appeals. Introduces standards for appellants of a decision by the planning board on subdivision approval.
- Submittal of Plans. Establishes new submittal requirements for subdivision plans

**Provisions for Partnership Communities (Communities that “Opt In”)**

• **Section 19. Land Use Partnership Act (New Chapter 40U)**

The bill creates a new statute in the Massachusetts General Laws -- Chapter 40U. The Land Use Partnership Act -- that offers additional powers to “partnership communities” that, by local option, adopt a partnership plan and implementing regulations to satisfy additional performance standards consistent with the state’s sustainable development principles.

- A process is established through which municipalities can become “partnership communities” by adopting partnership plans and implementing regulations that meet not only the basic requirements of Chapter 41 Section 81D but also additional performance standards.
- The partnership plans and implementing regulations must receive certification of the regional planning agency, determining that they meet minimum standards and consistency.
- For the first five years of the program, certification will be met if the municipality adopts a partnership plan and implementing regulations that satisfy the following. Subsequently, certification requirements may be set forth in regulations promulgated by an Interagency Planning Board.
  - Prompt and predictable permitting of commercial and industrial development within one or more economic development districts
  - Prompt and predictable permitting of residential development within one or more residential development districts that collectively can accommodate a number of new housing units equal to a housing target number equal to five percent of the total number of year round housing units in the community.
  - Prompt and predictable permitting of renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable and alternative energy manufacturing facilities within one or more zoning districts that are eligible locations.
  - A requirement for use of open space residential design for any development of 5 or more housing units in districts where the minimum lot area exceeds 40,000 square feet.
  - A requirement for low impact development techniques for any development that disturbs more than one acre of land
- Once a city or town becomes a Partnership Community, that community shall enjoy, in addition to those powers enumerated to all cities and towns in Chapter 40A, the following additional powers:
  - Rate of development. The power to regulate the rate of development

- Natural Resource Protection Zoning. The power to protect natural resources by limiting development densities in areas designated by the state or municipality as having important natural or cultural resource values.
- Vested Rights. The vesting period for a definitive subdivision plan would be reduced from eight years to four years.
- Development Agreements. The power to enter into development agreements that function as a bona fide local land use regulation.
- Development impact fees. Development impact fees authorized under Section 9F of Chapter 40A could be used to defray the costs of public elementary and secondary schools, libraries, municipal offices, affordable housing, and public safety facilities.
- Priority for infrastructure funding. Partnership Communities would receive priority in the awarding of discretionary funds for local infrastructure improvements and other programs
- Planning technical assistance. It is intended that technical assistance grants be offered to municipalities to assist in the preparation of partnership plans and implementing regulations.