


**S. 2144
AN ACT PROMOTING
HOUSING AND SUSTAINABLE
DEVELOPMENT IN THE
COMMONWEALTH**

WEBINAR - MAY 24, 2016

MASSACHUSETTS
SMART GROWTH
ALLIANCE

OVERVIEW OF PRESENTATION

1. Why zoning reform and housing production?
 - Why we need to update our planning, zoning, and subdivision laws, and incentivize housing production
 2. Legislative Process
 - Stakeholder meetings, changes to the bill
 3. Summary of current Senate Ways and Means draft bill
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WHY WE NEED TO REFORM OUR PLANNING, ZONING, AND SUBDIVISION LAWS

Economists estimate that restrictive zoning drives up housing prices in metro Boston by nearly 20% and leads to a 20% decline in employment. Outdated zoning has cost our region at least 156,000 jobs.

We are building fewer than half of the homes we need annually to meet our current state-wide needs and prevent job loss to other states. Meanwhile, combined housing and transportation costs now eat up an average of 50% of family budgets.

At least 52% of Americans want to live in places where they do not have to use a car very often. People who live in walkable neighborhoods are twice as likely to get the exercise they need, reducing the risk of obesity and making our communities more livable.

Every day, thirteen acres of forests and farmland are lost to low-density sprawl caused by inefficient and outdated zoning, generating more traffic in addition to infrastructure costs that drain municipal budgets.

The bill amends Chapter 40A (zoning), Chapter 41 (subdivision), and Section 81D (master planning).

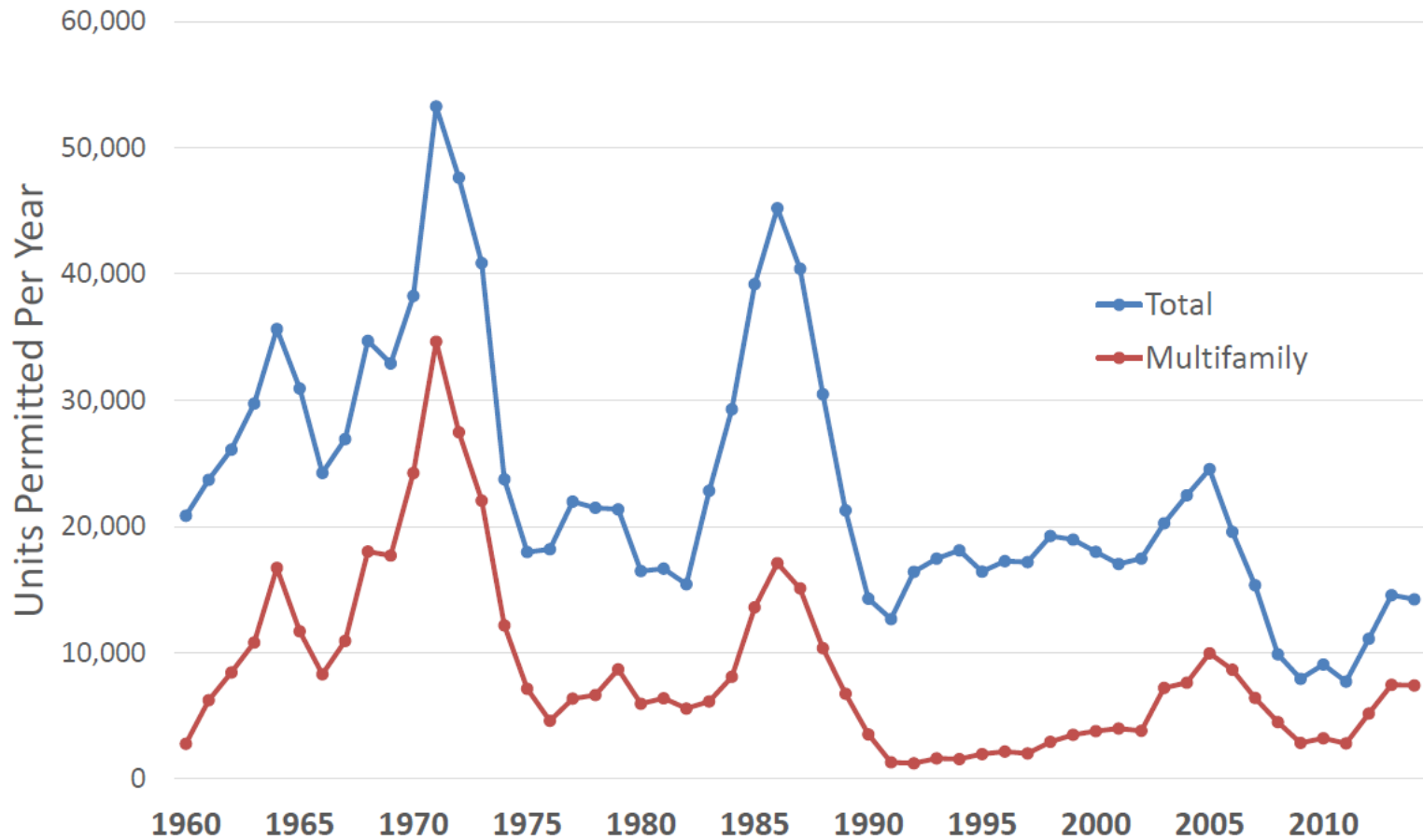
The legislation does not amend chapter 40B.



ADDRESSING THE HOUSING CRISIS

- The Metropolitan Area Planning Council projects that the state will need close to 500,000 new housing units by 2040 to accommodate the existing population and projected growth.
 - The Senate President created the Special Senate Committee on Housing, Chaired by Senator Linda Dorcena Forry with Vice Chair Majority Leader Harriette Chandler, to recommend a series of policy changes to address the housing crisis.
 - The final report included 19 recommendations to help address our region's crisis of housing affordability.
 - The proposed legislation includes several of these recommendations – ones that are relevant to zoning and planning.

Housing Production in Massachusetts 1960 to Present



Credit: Massachusetts Housing Partnership



LEGISLATIVE PROCESS

- Legislation for consideration, S2144, originated in the Joint Committee on Community Development and Small Business.
 - This bill, or a version similar to it, has been before the legislature for 4 years.
 - Other versions of the bill have been filed by Sen. Chander (LUPA) and Sen. Eldridge (CLURPA).
 - *Various groups have weighed in on the legislative proposals...*

...LEGISLATIVE PROCESS



...LEGISLATIVE PROCESS

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...LEGISLATIVE PROCESS

- The Senate President convened a discussion group with representation from both the “Smart Growth Coalition” and the “Real Estate Coalition”
- This was the first time in recent history both groups have been at the table
- In recent weeks, the group met for approximately 8 hours to discuss areas of consensus and to fine-tune those areas
 - A subgroup was formed to address technical clarifications and corrections to the proposed legislation. The subgroup submitted a detailed memo to the Senate with suggested changes, which were incorporated into the bill by Senate Ways and Means

REDRAFTED LEGISLATION

- Incorporating the suggestions from the technical working group, hours of meetings, and countless pages of testimony, the Senate Committee on Ways and Means redrafted legislation to:
 - offer overdue changes to the MA statutes on planning, permitting and zoning
 - promote housing production
 - offer modern zoning tools to cities and towns
 - and incentivize communities to plan for sustainable growth.

STATUTORY AUTHORITY FOR ZONING TOOLS:

- Site Plan Review
 - Inclusionary Zoning
 - Development Impact - Fees
 - Minor subdivisions / approval not required
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SITE PLAN REVIEW

- Site plan review is a tool commonly used around the nation—it applies where project approval is not discretionary and the board gets into layout & design.
- Since site plan review is not covered by our zoning statute, municipalities have created their own versions of site plan review, with the degree of discretion and scope of review varying by municipality
- The bill provides clear framework for site plan review
 - Developers and municipalities generally agree on the general policy goal of codifying site plan review in c.40A *for the first time*, so parties can understand the basic parameters of the process without having to read court cases
 - There is also consensus that site plan review is focused on how to arrange the physical elements of a project on the site.

INCLUSIONARY ZONING (IZ)

- Inclusionary zoning refers to zoning that require a given share of a new residential project be affordable to people with low to moderate incomes.
- Mixed income housing is something many municipalities want, particularly if they are under 10% affordable units and subject to Chapter 40B
- The bill would codify inclusionary zoning, allowing communities to refer to a statutory framework rather than a handful of court cases.
- Under the redrafted bill, municipalities are explicitly authorized to require such units “in return for” municipal affordable housing concessions (density bonuses, streamlined permitting or other measures that make the provision of the affordable units more feasible)


DEVELOPMENT IMPACT FEES

- Impact fees are payments required by local governments of new development for the purpose of providing new or expanded public infrastructure required to serve that development. This is a tool used across the nation.
 - The bill codifies the use of development impact fees for off-site infrastructure of particular types if the municipality meets the “nexus/proportionality” standard required by recent Supreme Court rulings, including a study that analyzes the impact of future development in a systematic way
 - This proposed framework would make local discussions about mitigation more predictable for both municipalities and developers, and the statutory language would reduce liability exposure from legal challenges.
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MINOR SUBDIVISIONS / APPROVAL NOT REQUIRED

- Massachusetts is the only state in the nation with an “Approval not required” (ANR) provision, meaning you can freely subdivide lots that have sufficient road frontage
- The bill would allow communities to use a new process—“minor subdivisions” to provide a middle way between ANR and subdivision regulation
- The bill as released from committee included an amendment intended to protect the interests of farmers and foresters, by permitting ANR to be used for 2 lots a year
- Under the redrafted provision, which has the support of the MA Forest Alliance
 - Applicable land must be classified as forest land under c.61 or as agricultural land under c.61A
 - There is a limitation on how much land can be included in the excluded 2 lots


AS-OF-RIGHT ZONING FOR MULTIFAMILY

- Requires all communities to permit a reasonable, minimum level of multifamily housing (3+ units in a building) for increased housing production.
 - With significant multifamily housing in great demand, 207 of our 351 cities and towns have permitted no multifamily housing with more than 5 units in over a decade and over a third of our communities have permitted only single family housing. The lack of multifamily zoning is the most significant barrier to building affordable and market rate housing, and is so basic a requirement that no other long-term production goals can be achieved successfully without it.
 - Municipalities must have at least 1 district “of reasonable size” where multi-family is permitted as of right
 - Recommended by the Special Senate Committee on Housing; currently included in a bill (H4140) before the House Committee on Ways and Means
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...WITH SUITABLE DENSITY AND LOCATION

- The bill recognizes that one size does not fit all, and provides for variation and flexibility in implementation
 - For rural towns (defined as having a population of 500/sq. mile), gross density of 8 units/acre. Elsewhere, gross density of the districts must be 15 units/acre
 - The districts must be in eligible locations, which includes areas of concentrated development (including villages) as well as areas near public transit (including buses) or other highly suitable locations.
 - DHCD will provide a determination of compliance and may waive or modify the requirements for individual communities
 - This provision may be enforced through required use of simple majority votes to amend zoning or through civil actions by the attorney general or aggrieved applicants
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ACCESSORY APARTMENTS

- Accessory dwelling units are a way of accommodating more reasonably-priced housing units in existing neighborhoods. They often allow family members to continue to live in their communities, or provide additional rental income to homeowners struggling with rising property values.
 - The bill allows property owners to construct one accessory dwelling unit as of right in existing single-family residential zoning districts on lots above a reasonable minimum size (5,000 square feet) with a limit on floor area (900 square feet).
 - Communities would be able to impose reasonable dimensional setbacks and reasonable bulk and height limits, but would not be able to use special permit mechanisms to frustrate or discourage the development and rental of these units.
 - Building code and wetlands restrictions will continue to apply
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CLUSTER DEVELOPMENTS

- A “cluster development,” also known as “open space residential design,” is the grouping of residential properties on a development site in order to use the extra land as open space, recreation or agriculture. Clustering of homes also makes neighborhoods more walkable and saves money on infrastructure
- The bill requires communities to designate districts where cluster development is allowed by right
- This provision will enable greater density of homes through clustering, but will not necessarily increase the number of homes allowed; local zoning may require a yield plan or a calculation deducting roadways, wetlands, etc.
- The extra land must be conveyed to the municipality, a non-profit, or a private association/trust and dedicated for conservation
- Currently included in a bill (H4140) before the House Committee on Ways and Means


PROMPT AND PREDICTABLE PROCESS

- Special permits (currently require a super-majority; reduced to a simple majority with local option to raise threshold)
 - Zoning amendments (currently require a super-majority; allowed to reduce to a simple majority)
 - Appeals (establishes “based on the record” appeals process for site plan review and subdivisions; gives judges discretion to set bond up to \$15,000 to limit frivolous appeals)
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EXTENDS THE DURATION OF CERTAIN PERMITS:

- Special permits (current: maximum of 2 years; proposed: minimum of 4 years)
- Site plan review permits (current: varies from town to town; proposed: 2 years)
- Building permits (current: 6 months; proposed: 2 years)

LOCAL MASTER PLANS

- Municipalities must do local master plans & update them every 10 years
 - Zoning that is consistent with master plans could be cited by the court as a rationale for sustaining zoning during challenges
 - Required master plan elements are cut in half to make plans easier to complete; others are optional
 - The required plan elements are land use & zoning, housing, natural resources & energy and implementation
 - Special provision made for municipalities in Barnstable and Dukes County
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VARIANCES

- The current standard for variances is difficult to meet and unevenly enforced
 - The bill provides a more realistic approach that will promote development while protecting neighborhood interests
 - Dimensional variances could be allowed if there is a “practical difficulty” for any reason relating to physical characteristics
 - Use variances would still require meeting the existing “substantial hardship” standard and must relate to soil, shape, or topography
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VESTING

- Vesting refers to the rules by which development rights on a property are “frozen” or secured. It is a means of balancing the interests of land owners and municipalities when the process of re-zoning begins
- The current statute is weighed toward land owners; the bill adjusts the balance in a logical way
- Unlike the current statute, where 8 years of vesting begins when the developer files a rough, preliminary plan that may be changed at a later date, the developer must file a definitive plan within 7 months that is “substantially similar” to the preliminary plan
- Developers must indicate their intentions earlier in the process—the plan must be filed before the planning board/city council hearing on the zoning amendment

MUNICIPAL OPT-IN PROGRAM TO PROMOTE PLANNING FOR GROWTH & CONSERVATION

- The bill requires the secretary of housing and economic development, in consultation with other secretaries and the attorney general, to design a municipal opt-in program to promote planning for growth and land conservation
 - Such a program would, as an example, encourage communities to establish by-right housing and economic development districts in suitable places, and use natural resource protection zoning and low-impact development techniques
 - Municipalities who choose to opt-in would receive incentives and preference for certain state funding
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