Topic	Description	S122	S2133
Board Training	Directs the Department of Housing and Community Development to establish an annual program of education and training for members of planning boards and zoning boards of appeal. Provides that DHCD may contract with the Citizens Planning Training Collaborative to provide such training	*Not in S.122*	Section 1
Municipal Opt In	Directs the secretary of housing and economic development (EOHED), in consultation with other state agencies, to create a municipal opt-in program to advance the state's economic, environmental, and social well-being. EOHED will develop criteria that municipalities would need to meet in order to become a certified community. EOHED would develop incentives for certified communities and for persons seeking municipal permits. Incentives could include reduced vesting time for definitive subdivision plans, enhanced natural resource protection zoning, expanded use of development impact fees, and preference for discretionary state grants and loans.	*The opt-in section (creating Chapter 40Y) required four detailed zoning actions that municipalities must take in order to become certified communities. In addition, procedures for becoming certified were included, as were the benefits that certified communities would be entitled to.*	Section 2
Definitions	The bill adds or expands definitions and authorizations for many zoning techniques, including development impact fees, inclusionary zoning, municipal affordable housing concessions, and natural resource protection zoning.	*S.122 also included definitions for form-based codes, unified development ordinance or bylaw, and development agreements.*	Section 3
Transfer Development Rights	Includes an updated definition of transfer of development rights	*Same as in S.122*	Section 3A
Authority	Restates the home rule authority of cities and towns and the powers of the regional planning agencies in Cape Cod, Martha's Vineyard, and Nantucket.	*S.122 had a section that affirmed a municipality's ability to adopt certain zoning practices.*	Section 4
Accessory Dwelling Units, by right	Directs municipalities to authorize accessory dwelling units, by-right, in any single-family residential district. Lot sizes must be 5,000 square feet or more and must be able to conform to Title 5 of the state environmental code and other health and safety codes and laws. Municipalities may require that either of the units be owner-occupied and may cap the total number of accessory apartments at 5% of the total non-seasonal housing units. Municipalities may regulate accessory apartments for dimensional setbacks, bulk, and height.	*Not in S.122*	Section 5
Multi-family and	Municipalities must identify at least 1 district of reasonable size for	*Not in S.122*	Section 6

Open Space Residential Design, by right	multi-family housing, by-right. In rural towns, the district must have a gross minimum density of 8 units per acre and 15 units per acre in all other municipalities, subject to further limitations of wetlands and title 5 laws. The department of housing and community development will develop regulations for this section. The department may waive or modify requirements for rural municipalities or where no eligible location is found. Open space residential developments must also be allowed in a district or through overlay districts. A municipality may set a minimum size for such developments, require either a yield plan or calculation to determine yield, and provide for density bonuses by special permit. A court may provide declaratory and injunctive relief if a zoning ordinance or bylaw fails to comply with this section.		
Zoning Amendment Vote	This section clarifies that the zoning majority vote may be changed by ordinance or bylaw.	*Not in S.122*	Section 7
Zoning Vote to enact Multi-Family and Open Space Residential Developments	For municipalities that have failed to meet the requirements of section 6 above, the zoning vote to adopt consistent ordinances or bylaws would be reduced to a simple majority.	*Not in S.122*	Section 8
Report on Consistency of Proposed Ordinances and Bylaws with Master Plan	A planning board would include in its report an evaluation of the consistency of the proposed bylaw or ordinance with a master plan, if one has been adopted.	*Not in S.122*	Section 9
Vote to Adopt Zoning	A municipality may reduce the voting majority required to adopt zoning to as low as a simple majority (from the now-required two-thirds majority).	*Same as in S.122*	Section 10
Vested Rights for Building Permits and Special Permits	Updates vesting rights for building and special permits to two years and three years, respectively.	*Same as in S.122*	Sections 11-14
Subdivision Vesting	Changes vesting trigger to a preliminary plan, followed by a substantially similar definitive plan, prior to the public hearing on the ordinance or bylaw.	*S.122 proposed to change the trigger to prior to the first notice of the proposed zoning change and*	Section 15

		would have protected the plan, not the land, for 8 years.	
Special Permits	Deletes the requirement to use a special permit for a number of zoning techniques.	*Substantially the same as in S.122*	Section 16
Special Permit Vote	Resets the vote requirement to approve a special permit to a simple majority. A municipality may require a higher majority through ordinance or bylaw.	*Same as in S.122*	Section 17
Special Permit Durations	Extends the duration of special permit to at least 3 years. Includes procedures for further extension.	*Same as in S.122*	Section 18
Hazardous/Solid Waste Facilities	Inserts the word "principally" before "zoned" in two places.	*Same as in S.122*	Section 19 and Section 20
Site Plan Review (SPR)	The bill adds a new section that standardizes SPR as follows: (1) decisions must be made within 120 days, with a public hearing optional; (2) when SPR overlaps with a special permit, the reviews must coincide; (3) approval is by simple majority; (4) approvals may be subject to conditions, including off-site mitigation in limited circumstances only; (5) duration shall be a minimum of two years; and (6) appeals shall be based on the existing record, not new evidence.	*Substantially the same as in S.122, with the exception of extending the decision period from 95 days to 120 days.*	Section 21(9D)
Development Impact Fees	Rationally-based impact fees are predictable for developers and can reduce local opposition to some development projects, because there is confidence that projects will bear their fair share of impacts on public facilities. This allows more types of development to be permitted as-of-right instead of undergoing the lengthy and costly special permit process. This new section in the Zoning Act authorizes development impact fees, based on in-state models (Medford and Cape Cod Commission), prevailing national practice, and federal case law. The bill clearly lists the public capital facilities for which impact fees may be assessed and prohibits charging for the same impact more than once ("double dipping"). Affordable housing projects and agriculture are exempted from impact fees. Fees must be paid into a dedicated trust fund and used within 6 years.	*Substantially similar to S.122 with three primary changes: no longer a reference to multi-community impact fees; no longer a reference to phased projects; and unused funds must be returned in 6 years, not 10 as outlined in S.122.*	Section 21 (9E)
Inclusionary Zoning	Inclusionary housing programs that require the creation of affordable housing in development projects can increase diversity in local housing opportunities and help to meet local requirements under	*Much of the language is similar in S.122, but the earlier bill did not require a municipality to provide*	Section 21 (9F)

	Chapter 40B. Municipalities that require the inclusion of affordable units must offer concessions such as a density bonus to compensate for the provision of affordable units. Off-site units, land dedication, or funds may also be provided in lieu of on-site dwelling units. The upper limit of affordability is households earning up to 120% of the Area Median Income (AMI). Inclusionary zoning may require some or all of the affordable units to be eligible under Chapter 40B (i.e., units limited to households with incomes up to 80% of AMI). Affordable units must be price-restricted for no less than 30 years.	*municipal affordable housing concessions, but it required programs to meet the nexus/proportionality standard.*	
Land Use Dispute Avoidance	Authorizes use of executive session by participating public bodies and use of confidentiality provisions for mediation.	*S.122 included much more detailed procedures for dispute resolution.*	Section 21 (9G)
Variances	Variances offer a "relief valve" from zoning, since no local code can anticipate difficulties with every piece of land or personal circumstance. Variances are particularly helpful for small-scale residential projects involving renovations, additions, or infill development. But the current Zoning Act is overly restrictive for landowners and towns. As a result, some zoning boards approve almost no variances, while others grant them liberally but illegally. This section entirely rewrites the current variance provisions; it sets new procedures and criteria while still maintaining a community's discretion to condition or deny a variance, including on grounds of "self-created" hardship. Dimensional variances may be granted using a "practical difficulty" standard. Use variances remain with the "substantial hardship" standard. The time within which a variance must be used is extended from one to two years, with one-year extensions allowed.	*S.122 granted more discretion to municipalities to approve use variances, but did not provide the more liberal "practical difficulty" standard for dimensional variances.*	Section 22
Board of Health Notice	Notice of public hearings for projects seeking a zoning approval must be provided to Boards of Health.	*Substantially the same as in S.122*	Section 23
Bond during appeal	A court may require a $15,000 bond when approvals of special permits, variances, or site plans are appealed. When deciding on bond requirements, the court may consider the relative merits of the appeal and financial means of the appellant and defendants.	*Not in S.122*	Section 24
Master Plan	The section seeks to accomplish the following objectives: (1) plan elements reflect the language of the state's Sustainable Development Principles, including public health considerations; (2) all communities	*Similar to S.122, but the earlier bill made master planning optional and included some more detailed plan*	Section 25

	must complete five required elements (goals and objectives, housing, natural resources and energy management, land use and zoning, and implementation), but are free to choose among the other seven optional elements; (3) superfluous data collection is discouraged; (4) all elements must be assessed against a regional plan, if any; (5) a public hearing is required before adoption; and (6) the plan must be adopted by the local planning board and the local legislative body.	*elements.*	
Reference to Minor Subdivision	Adds a reference to minor subdivisions in the definition of subdivision.	*Same as in S.122*	Section 26
Minor Subdivision and Approval Not Required (ANR) projects	Current Massachusetts law prevents communities from effectively planning or regulating the development of roadside land, through the uniquely permissive ANR process. No other state law allows unregulated roadside development in this fashion. At the same time, small residential subdivisions with a new road must undergo the same process as those with 50 or 100 lots. The bill permits a community to eliminate the ANR loophole if it creates a less onerous minor subdivision review process for projects with six or fewer lots. A separate procedure has been developed to address minor lot line changes.	*Similar to S. 122, but the earlier bill did not provide for a farm/forest exemption and minor subdivision could be adopted by the Planning Board (not Town Meeting).*	
Minor Subdivisions	Defines where minor subdivisions would apply.	*Similar to S.122*	Section 27
Amending lot layouts	Because the ANR device is routinely used to make small changes to property lines, a suitable replacement mechanism was needed. A new section permits the recording of plans for minor lot line changes, subject to specific conditions.	*Substantially similar to S.122*	Section 28 and Section 29
Subdivision Road Widths	Many local subdivision regulations require unjustifiably excessive roadway standards. These may adversely affect aesthetics, increase stormwater runoff, and inflate housing costs by imposing undue costs on the developer. This section defines a “safe harbor” for roadway widths up to 24 feet.	*S.122 included this as well as establishing a rebuttable presumption that roadway standards exceeding those applicable to the construction or “reconstruction” of publicly-financed roadways are excessive.*	Section 30
Subdivision Parks	The Subdivision Control Law is modified so that local subdivision regulations may require a dedication of a portion of a subdivision for park use benefitting the lots within the subdivision for more than three years. This provision is not intended and can’t be interpreted to	*Substantially similar to S.122*	Section 31

	require transfer of ownership of such park areas to a governmental unit.		
Recording of Plans	Defines the process for recording perimeter plans and lot line changes.	*Same as in S.122*	Section 32
Subdivision Appeals	Establishes an appeal based on the record. Includes language for requiring bond for appeals, as provided in section 24.	*Similar to S. 122, with addition of the bond provisions.*	Section 33
Minor Subdivision Requirements	This section defines how minor subdivisions operate: they allow a municipality to replace the ANR process for subdivisions up to 6 lots and projects. A 2/3's majority of the legislative branch must authorize this change. A minor subdivision may only be denied by a 2/3's majority of the planning board. An exemption allows 2 lots per year, up to 6 maximum, to be created using ANR for land in agricultural, forest, or horticultural use.	*S.122 allowed the planning board to adopt minor subdivision, did not include an exemption for land in ag or forest use, and did not require a 2/3's majority for denial.*	Section 34
Permit Session of the Land Court	Expands the jurisdiction of the Land Court permit session to include residential, commercial, industrial, and mixed-use projects.	*Similar to S.122, but S.122 didn't exempt industrial projects from minimum thresholds.*	Section 35
Subdivision Appeals	Modifies subdivision appeals filing deadline to within 60 days after the proceeding.	*Same as S.122*	Section 36
Transition Periods for Inclusionary Zoning, Master Plans, and Site Plan Review	The transition periods for Inclusionary Zoning and site plan review are three years and 10 years for master plans.	*S.122 transition periods are the same.*	Section 37— Section 39
Transition Period for Variances	Allows three years for existing variance provisions to be consistent with new law.	*Similar to S.122*	Section 40
Extent of Variances	Variances granted prior to this act, shall run with the land, unless otherwise proscribed	*Not in S.122*	Section 41
Transitions for ADUs, Impact Fees, Multi-family/OSRD	The ADUs changes would be effective 7/1/17; the impact fee section would be effective 1/1/18; and the multi-family/OSRD sections would be effective 7/1/19.	*S.122 did not include ADUs or multi-family/OSRD. It included a two year transition period from date of enactment for impact fees.*	Sections 42-44

Other Elements in S.122 that are not in S.2133.

- ANR Plan Freeze: Under current law, the endorsement of a simple ANR plan for lots fronting on a public way – even a perimeter plan or a plan showing only a slight line change to an existing parcel – freezes any zoning use change for three years. This device was recently considered in the City of Northampton to preserve rights to build a porn store. It would have been eliminated.

- Three Lots in Common Ownership Dimensional Freeze: Up to three pre-existing adjoining lots under common ownership are protected against any zoning dimensional changes for five years after any zoning change. Reportedly, this was added by a legislator in the 1970s at the request of a constituent, to protect the constituent's land! It has vexed cities and towns for over 35 years. It would have been eliminated.

- Legal Effect of Master Plans**.** Current Massachusetts law does not require zoning to be consistent with a local master plan. As a result, many municipalities have not created or updated their plans. The bill makes master plans an option for municipalities. But to incentivize thoughtful local planning, the bill also states that if local zoning is challenged in a lawsuit, and the court finds that the challenged provision is not inconsistent with a local master plan that has been certified by the applicable regional planning agency, then the provision shall be deemed to serve a public purpose.

- Consolidated Permitting. Development proposals often need multiple local permits from multiple local boards, each with its own substantive and procedural requirements. The new Chapter 40X would allow applicants for larger, more complex projects (at least 25,000 square feet or 25 dwelling units) to employ a consolidated permitting process. This would ensure that local boards receive common information about the project and that they have the opportunity to bring all decision-making bodies together at the beginning of a project review at a consolidated hearing. More efficient reviews could result, benefitting all parties to the development review process. At the same time, each board would retain the authority to make an independent decision in accordance with its own standards.