

SENATE 2144: **AN ACT PROMOTING HOUSING AND SUSTAINABLE DEVELOPMENT**

(summary reflects text as redrafted)

SPONSOR: Joint Committee on Community Development and Small Businesses

LEGISLATIVE HISTORY: 02/25/16 Reported from the Committee on Community Development and Small Businesses as a new draft of S118 and S122 and referred to the Committee on Senate Ways and Means

EXISTING LAWS

AFFECTED: M.G.L. c. 23B §3; M.G.L. c. 40A §§ 1, 3, 5, 6, 9 to 12, and 17; M.G.L. c. 41 §§ 81A, 81D, 81L, 81O, 81Q, 81U, 81X, and 81BB; M.G.L. c. 44 § 53G; M.G.L. c. 185 §3A; M.G.L. c. 249 §4

PROPOSED

- LEGISLATION:**
- Requires the Department of Housing and Community Development to establish, conduct and maintain an annual program of education and training for members of local planning boards and zoning boards of appeals.
 - Requires the Department of Housing and Community Development to develop a municipal opt-in program to advance the state's economic, environmental, and social well-being through enhanced planning for economic growth, land conservation, workforce housing creation and mobility.
 - Allows for accessory dwelling units on residential lots that meet certain requirements without a special permit.
 - Requires zoning ordinances and bylaws to provide at least one district of reasonable size in which multi-family housing is a permitted use as of right.
 - Requires zoning ordinances and bylaws to provide for open space residential development as of right in a specific zoning district or in multiple districts through overlay zoning.
 - Allows cities and towns the option to change the voting threshold to approve zoning amendments from the current 2/3 vote to a simple majority vote.
 - Requires a local zoning board to consider consistency with the

municipality's master plan when evaluating an ordinance, by-law, or an amendment to an ordinance or by-law.

- Changes the current standard that zoning ordinances or by-laws do not apply to building or special permits issued before the first publication of notice of the public hearing on the ordinance or by-law to a requirement that the ordinance or by-law would not apply to building or special permits applications received before the first publication of notice of the public hearing.
- Eliminates a provision in current law that protects up to 3 pre-existing adjoining residential lots under common ownership against any zoning dimensional changes for 5 years after any zoning change.
- Modifies vesting rights for subdivision plan freezes to allow for a land owner to submit a preliminary subdivision plan, followed within 7 months by a substantially similar definitive plan, before a public hearing on a zoning or by-law change in order to protect the land shown on the plan.
- Decreases the voting requirements for approval of a special permit from 2/3 vote to a simple majority vote.
- Increases the duration of special permits from a maximum of 2 years to a minimum of 3 years.
- Clarifies existing law regarding provisions for siting of refuse stations in areas zoned principally for industrial use.
- Codifies the site plan review process to establish standards and criteria by which a project and its direct adverse impacts on properties and public infrastructure within the surrounding 300 feet of the parcel are evaluated.
- Provides statutory authority and limitations on the use of development impact fees, ensuring the fees have a rational nexus to, and are roughly proportionate to the impacts created by a proposed development and enumerating the type of capital facilities for which a development impact fee can be assessed.
- Provides statutory authority and limitations on the use of inclusionary zoning ordinances, authorizing ordinances or by-laws

to require applicants for a residential or mixed use development to provide inclusionary housing units in return for municipal affordable housing concessions.

- Clarifies that no ordinance or by-law can prohibit a landowner from requesting the municipality to engage in a land use dispute avoidance process and establishes confidentiality for the process, including exemption from the public records law and tolling of applicable time requirements.
- Updates the standard and required findings necessary for a zoning board and clarifies that variances, other than a use-variance, run with the land.
- Requires that local boards of health receive notice of projects seeking zoning approvals.
- Gives the court discretion to issue a surety or cash bond upon appeal of a special permit, variances, or site plan approval.
- Updates the current master plan requirements to ensure plans reflect the Commonwealth's Sustainable Development Principles and are tailored to the specific needs of the municipality. Master plans are subject to a public hearing and must be adopted by the local planning board and the local legislative body.
- Allows municipalities to pass a minor subdivision ordinance or by-law to opt-in to an alternative to the current "approval not required process" and thereby apply certain rules and regulations to the minor subdivision process.
- Clarifies that design and dimensional subdivision requirements for total travel lane widths no greater than 24 feet are presumed not to be excessive.
- Clarifies that a planning board may require a subdivision plan to show land suitable for park or recreation purposes and may require no building be built on that land.
- Allows the recording of plans for minor lot line changes, subject to certain conditions.
- Clarifies the appeals process to challenge a decision on a

subdivision or minor subdivision and gives the court discretion to issue a surety or cash to limit frivolous appeals.

- Requires cases appropriate for the permit session of the land court, but not originally filed in the permit session, to be transferred to the permit session upon request of a party in the dispute.
- Makes a technical correction to the time to appeal in the nature of certiorari.
- Requires any municipality with an existing zoning variance, site plan review or inclusionary zoning ordinance to conform to the provisions of the legislation within 3 years.
- Allows a master plan currently in effect to remain in effect for 10 years, at which time it must be updated to conform to the requirements of this act.
- Grandfathers any variance granted prior to passage of this act and clarifies that the variance runs with the land.

ESTIMATED

COST:

This legislation is estimated to cost the Commonwealth \$500,000 when fully implemented.

(AHC)