

SENATE No. 2438

Senate, July 14, 2016 – Text of amendment (183) (offered by Senator Forry) to the Ways and Means amendment (Senate, No. 2423) to the House Bill relative to job creation, workforce development and infrastructure investment.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

1 SECTION XX. Section 2 of chapter 40R of the General Laws, as so appearing, is hereby
2 amended by inserting after the definition of “Approved smart growth zoning district” the
3 following definition:

4 “Approved starter home zoning district”, a starter home zoning district that has
5 been adopted by a city or town and approved by the department in accordance with this chapter
6 and the regulations of the department, so as to be eligible for the receipt of financial and other
7 incentives. The department may revoke its approval if the obligations of the city or town are not
8 met.

9 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
10 further amended by inserting after the definition of “Approving authority” the following
11 definition:-

12 “Area of concentrated development”, a center of commercial activity within a
13 municipality, including town and city centers, other existing commercial districts in cities and
14 towns, and existing rural village districts.

15 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
16 further amended by striking out the definition of “Developable land area” and inserting in place
17 thereof the following definition:-

18 “Developable land area”, that area within an approved smart growth or starter
19 home zoning district that can be feasibly developed into residential or mixed use development
20 determined in accordance with regulations of the department. Developable land area shall not
21 include: (1) land area that is already substantially developed, including existing parks and
22 dedicated, perpetual open space within such substantially developed portion; (2) open space
23 designated by the city or town as provided in section 6; or (3) areas exceeding one-half acre of
24 contiguous land that are unsuitable for development because of topographic features or for
25 environmental reasons, such as wetlands.

26 It shall include the land area occupied by or associated with underutilized
27 residential, commercial, industrial or institutional buildings or uses that have the potential to be
28 recycled or converted into residential or mixed use developments as determined in accordance
29 with regulations of the department.

30 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
31 further amended by striking out the definition of “Eligible locations” and inserting in place
32 thereof the following definition:-

33 “Eligible locations”, areas that by virtue of their infrastructure, transportation
34 access, existing underutilized facilities, or location make highly suitable locations for residential
35 or mixed use smart growth zoning districts or starter home zoning districts, including without
36 limitation (1) areas near transit stations, including rapid transit, commuter rail and bus and ferry

37 terminals; or (2) areas of concentrated development, including town and city centers, other
38 existing commercial districts in cities and towns, and existing rural village districts.

39 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
40 further amended by striking the definitions of “Letter of eligibility” and “Mixed use
41 development” and inserting in place thereof the following 4 definitions:-

42 “Housing production plan”, an affordable housing plan adopted by a
43 municipality and approved by the department in accordance with its regulations.

44 “Housing production summary”, a detailed summary of the city or town’s: (1)
45 affordable housing production history, (2) housing needs and housing demand assessment, (3)
46 analysis of development constraints and capacity, (4) current housing goals and strategy for
47 achieving those goals and (5) proposed locations for affordable housing production.

48 “Letter of eligibility”, a letter to a city or town to be issued by the department
49 within 60 days of receiving a complete and approvable application from a city or town for
50 approval of a smart growth or starter home zoning district.

51 “Mixed use development”, a development containing a mix of residential uses
52 and non-residential uses, including, without limitation: commercial, institutional, industrial or
53 other uses; all conceived, planned and integrated to create vibrant, workable, livable and
54 attractive neighborhoods.

55 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
56 further amended by striking out the definition of “Project” and inserting in place thereof the
57 following 2 definitions:-

58 “Production bonus payment”, a one-time payment to a municipality from the
59 Smart Growth Housing Trust Fund, established in section 35AA of chapter 10 for each housing
60 unit of new construction that is created in a starter home zoning district pursuant to the starter
61 home overlay provisions of the applicable zoning ordinance or by-law.

62 “Project”, a proposed residential or mixed-use development within a smart
63 growth or starter home zoning district.

64 SECTION XX. Said section 2 of said chapter 40R, as so appearing, is hereby
65 further amended by inserting after the definition of “Smart growth zoning district certificate of
66 compliance” the following 3 definitions:-

67 “Starter home”, a single family home not exceeding 1,850 square feet in heated
68 living area; provided, however that nothing herein shall preclude a city or town from adopting a
69 starter home zoning district that would permit construction on a single lot in a starter home
70 zoning district of an accessory dwelling unit of 600 square feet or less on the same lot as a starter
71 home.

72 “Starter home zoning district", a zoning district consisting of not less than 3
73 contiguous acres of developable land area, adopted by a city or town pursuant to this chapter,
74 that is superimposed over 1 or more zoning districts in an eligible location, within which a
75 developer may elect to either : (1) develop starter homes in accordance with requirements of the
76 starter home zoning district ordinance or by-law or (2) develop a project in accordance with
77 requirements of the underlying zoning district, and otherwise consistent with department
78 guidance.

79 “Starter home zoning district certificate of compliance”, a written certification
80 by the department in accordance with section 7.

81 SECTION XX. Section 3 of said chapter 40R, as so appearing, is hereby
82 amended by inserting, after the word “district”, in lines 2 and 7, the following words:- or starter
83 home zoning district.

84 SECTION XX. Said section 3 of said chapter 40R, as so appearing, is hereby
85 further amended by inserting after the word “districts”, in line 15, the following words:- or
86 starter home zoning districts.

87 SECTION XX. Section 4 of said chapter 40R, as so appearing, is hereby
88 amended by inserting after the word “growth”, in line 3, the following words:- or starter home.

89 SECTION XX. Said section 4 of said chapter 40R, as so appearing, is hereby
90 further amended by inserting after the word “district”, in line 14, the following words:- or starter
91 home zoning district.

92 SECTION XX. Said chapter 40R is hereby amended by striking out sections 5
93 to 10, inclusive, as so appearing, and inserting in place thereof the following 6 sections:-

94 Section 5. The chief executive of a city or town desiring to adopt a smart growth
95 zoning district or starter home zoning district ordinance or by-law shall submit the necessary
96 materials to the department for a preliminary determination of eligibility for approval. The
97 information in the application shall:

98 (a) identify and describe the boundaries of the proposed smart growth
99 zoning district or starter home zoning district;

100 (b) identify and describe the developable land area within the proposed
101 smart growth zoning district or starter home zoning district;

102 (c) as to smart growth zoning districts only, identify and describe other
103 residential development opportunities for infill housing and the residential re-use of existing
104 buildings and underutilized buildings within already developed areas;

105 (d) include any comprehensive housing plan or housing production plan
106 previously adopted by the city town or, if the city or town has no comprehensive housing plan or
107 housing production plan, a housing production summary, as set forth in section 8;

108 (e) include a copy of the proposed smart growth district or starter home
109 zoning district ordinance or by-law;

110 (f) by narrative and exhibits, establish the elements set forth in section
111 6.

112 Section 6. (a) A proposed smart growth zoning district or starter home
113 zoning district shall satisfy the following minimum requirements:

114 (1) Each proposed district shall be located in an eligible location.

115 (2) The zoning for each proposed smart growth zoning district shall
116 provide for residential use to permit a mix of housing for families, individuals, persons with
117 special needs and the elderly.

118 (3) Housing density in a proposed smart growth district shall be at least:
119 20 units per acre for multi-family housing on the developable land area, 8 units per acre for
120 single-family homes on the developable land area, and 12 units per acre for 2 and 3 family

121 buildings on the developable land area. Housing density in a proposed starter home district shall
122 satisfy the following criteria: (a) the density shall be no less than 4 units per acre of developable
123 land area; (b) the development shall emphasize smart growth principles of development, such as
124 cluster development and other forms of development providing for common open space usable
125 for passive or active recreational activities, or the use of low-impact development techniques;
126 and (c) at least 50 per cent of the starter homes to be developed in a proposed starter home
127 district, excluding accessory dwelling units, must contain 3 or more bedrooms.

128 (4) The zoning ordinance or by-law for each proposed smart growth
129 zoning district shall provide that not less than 20 per cent of the residential units constructed in
130 projects of more than 12 units shall be affordable housing and shall contain mechanisms to
131 ensure that not less than 20 per cent of the total residential units constructed in each proposed
132 district shall be affordable housing.

133 (5) The zoning ordinance or by-law for each proposed starter home
134 zoning district shall provide that, as a condition of the increased density permitted in a starter
135 home zoning district, the following affordability threshold must be met:

136 (i) At least 15 per cent of the housing units shall be affordable to occupants or
137 families with incomes at or below 80 per cent of the median income for the area in which the city
138 or town is located as defined by the United States Department of Housing and Urban
139 Development (“AMI”); and

140 (ii) At least 25 per cent of the housing units assisted by the UCH-TIF agreement shall
141 be affordable to occupants or families with incomes at or below 110 per cent of the AMI,
142 including the 15 per cent referenced in subsection (1) above; and

143 (iii) The property shall satisfy the requirements of any existing inclusionary zoning
144 ordinance, bylaw, or executive order in the city or town, under which the property owner is
145 required to make a portion of the housing units affordable to low- or moderate-income
146 households.

147 Provided further that the zoning ordinance or by-law for each proposed starter home
148 district shall contain mechanisms to ensure that the required percentage of the total residential
149 units constructed in each proposed starter home district shall meet such affordability
150 requirements, including an affordable housing restriction, as defined in section 31 of chapter 184,
151 that has a term of not less than 30 years.

152 (6) A proposed smart growth zoning district shall permit infill housing
153 on existing vacant lots and shall allow the provision of additional housing units in existing
154 buildings, consistent with neighborhood building and use patterns, building codes and fire and
155 safety codes.

156 (7) A proposed smart growth zoning district or starter home zoning
157 district shall not be subject to limitation of the issuance of building permits for residential uses or
158 a local moratorium on the issuance of such permits. In addition, a proposed starter home zoning
159 district shall not be subject to any municipal environmental or health ordinances, bylaws or
160 regulations that exceed applicable requirements of state law or regulation, unless the department
161 of environmental protection has determined that specific local conditions warrant imposition of
162 more restrictive local standards, or the imposition of such standards would not render infeasible
163 the development contemplated under the comprehensive housing plan, housing production plan
164 or housing production summary submitted as part of the application for such district.

165 (8) A proposed smart growth zoning district or starter home zoning
166 district shall not impose restrictions on age or any other occupancy restrictions on the district as a
167 whole. This shall not preclude the development of specific projects within a smart growth zoning
168 district that may be exclusively for the elderly, the disabled or for assisted living. Not less than
169 25 per cent of the housing units in such a project within a smart growth zoning district shall be
170 affordable housing, as defined in section 2.

171 (9) Housing in a smart growth zoning district or starter home zoning
172 district shall comply with federal, state and local fair housing laws.

173 (10) A proposed smart growth zoning district or starter home zoning
174 district may not exceed 15 per cent of the total land area in the city or town. Upon request, the
175 department may approve a larger land area if such approval serves the goals and objectives of
176 this chapter.

177 (11) The aggregate land area of all approved smart growth zoning
178 districts and starter home zoning districts in the city or town may not exceed 25 per cent of the
179 total land area in the city or town. The department may approve a larger combined land area if
180 the department determines that such approval serves the goals and objectives of this chapter.

181 (12) Housing density in any proposed district shall not over burden
182 infrastructure as it exists or may be practicably upgraded in light of anticipated density and other
183 uses to be retained in the district.

184 (13) A proposed smart growth zoning district or starter home zoning
185 district ordinance or by-law shall define the manner of review by the approving authority in

186 accordance with section 11 and shall specify the procedure for such review in accordance with
187 regulations of the department.

188 (b) A city or town may modify or eliminate the dimensional standards
189 contained in the underlying zoning in the smart growth zoning district or starter home zoning
190 district ordinance or by-law in order to support desired densities, mix of uses and physical
191 character. The standards that are subject to modification or waiver may include, but shall not be
192 limited to; height, setbacks, lot coverage, parking ratios and locations and roadway design
193 standards. Modified requirements may be applied as of right throughout all or a portion of the
194 smart growth zoning district or starter home zoning district, or on a project specific basis through
195 the smart growth zoning district or starter home zoning district plan review process as provided
196 in the ordinance or by-law. A city or town may designate certain areas within a smart growth
197 zoning district or starter home zoning district as dedicated perpetual open space through the use
198 of a conservation restriction as defined in section 31 of chapter 184 or such other means as may
199 be created by state law. The amount of such open space shall not be included as developable land
200 area within the smart growth zoning district or starter home zoning district. Open space may
201 include an amount of land equal to up to 10 per cent of what would otherwise be the developable
202 land area if the developable land would be less than 50 acres, and 20 per cent of what would
203 otherwise be the developable land area if the developable land area would be 50 acres or more.

204 (c) The zoning for a proposed smart growth zoning district may provide
205 for mixed use development.

206 (d) A smart growth zoning district or starter home zoning district may
207 encompass an existing historic district or districts. A city or town, with the approval of the

208 department, may establish a historic district in an approved smart growth zoning district or
209 starter home zoning district in accordance with chapter 40C, so long as the establishment of the
210 historic district meets the requirements for such a historic district and does not render the city or
211 town noncompliant with this chapter, as determined by the department. The historic districts may
212 be coterminous or non-coterminous with the smart growth zoning district or starter home zoning
213 district. Within any such historic district, the provisions and requirements of the historic district
214 may apply to existing and proposed buildings.

215 (e) A city or town may require more affordability than required by this
216 chapter, both in the percentage of units that must be affordable, and in the levels of income for
217 which the affordable units must be accessible, provided, however, that affordability thresholds
218 shall not unduly restrict opportunities for development.

219 (f) With respect to a city or town with a population of fewer than 10,000
220 persons, as determined by the most recent federal decennial census, for hardship shown, the
221 department may, pursuant to regulations adopted under this chapter, approve zoning for a smart
222 growth zoning district with lower densities than provided in this chapter, if the city or town
223 satisfies the other requirements set forth in this section; provided, however, that such approval
224 shall not be withdrawn solely because, in a future census, the population of the city or town
225 exceeds 10,000 persons.

226 (g) Any amendment or repeal of a zoning ordinance or by-law affecting
227 an approved smart growth zoning district or starter home zoning district shall not be effective
228 without the written approval by the department. Each amendment or repeal shall be submitted to
229 the department with an evaluation of the effect on the city or town's comprehensive housing plan

230 or housing production plan, if any. Amendments shall be approved only to the extent that the
231 district remains in compliance with this chapter. If the department does not respond to a
232 complete request for approval of an amendment or repeal within 60 days of receipt, the request
233 shall be deemed approved.

234 (h) Nothing in this chapter shall affect a city or town's authority to
235 amend its zoning ordinances or by-laws under chapter 40A, so long as the changes do not affect
236 the smart growth zoning district or starter home zoning district.

237 Section 7. (a) On or before October 1 of each year after the year of approval of
238 a district by the department, the department shall send a smart growth zoning district certificate
239 of compliance or starter home zoning district certificate of compliance, as applicable, to each city
240 or town with an approved district. In order to receive such a certificate, the city or town shall
241 verify within the time specified by the department that:

242 (1) the city or town has adopted and approved a smart growth zoning
243 district or a starter home zoning district, as applicable;

244 (2) the certification has not been revoked by the department;

245 (3) the district is being developed in a manner that reasonably complies
246 with the applicable minimum requirements set forth in section 6 for housing density and
247 affordability;

248 (4) the approving authority has not unreasonably denied plans for
249 projects, or has only denied plans for projects in a manner consistent with its smart growth
250 zoning district ordinance or by-law or starter home zoning district ordinance or by-law, as

251 applicable, the city or town's comprehensive housing plan, housing production plan, or the
252 housing production summary submitted with the city or town's initial application for approval by
253 the department, as applicable, and this chapter.

254 (b) If the department is unable to certify compliance, the department
255 shall hold a public hearing subject to chapter 30A. If the department concludes that the city or
256 town is in material noncompliance with the requirements set forth in this section, the department
257 may revoke certification. A revocation of certification shall be recorded with the registry of
258 deeds or land court registry district for the county or district within which the city or town is
259 located, indexed in the grantor index under the name of the city or town. Any revocation of
260 certification or other sanctions imposed by the department shall not affect the validity of the
261 smart growth zoning ordinance or by-law or starter home zoning district ordinance or by-law, as
262 applicable, or the application of such ordinance or by-law to land, development or proposed
263 development within the smart growth zoning district.

264 Section 8. A city or town shall submit to the department, concurrently with the
265 city or town's application for a letter of eligibility, either an existing comprehensive housing
266 plan, an existing housing production plan, or a housing production summary. The plan or
267 summary shall include an estimate of the projected number of units of new construction that
268 could be built in the proposed smart growth zoning district or starter home zoning district. If a
269 city or town has already completed a comprehensive housing plan or housing production plan,
270 the city or town shall submit with its application to the department a description of how the
271 proposed smart growth zoning district or starter home zoning district relates to and will further
272 the goals of its comprehensive housing plan or housing production plan, as well as an estimate of
273 the projected number of units of new construction that could be built within the district.

274 Section 9. Each city or town with an approved smart growth zoning district or
275 starter home zoning district shall be entitled to payments pursuant to this section.

276 (a) The commonwealth shall pay from the trust fund a zoning incentive
277 payment, according to the following schedule:

278	Projected Units of	
279	New Construction	Payment
280	Up to 20	\$10,000
281	21 to 100	\$75,000
282	101 to 200	\$200,000
283	201 to 500	\$350,000
284	501 or more	\$600,000

285 Subject to any conditions imposed by the department as a condition of approving
286 a smart growth zoning district or starter home zoning district, the zoning incentive payment shall
287 be payable upon confirmation of approval of the district by the department. The projected
288 number of units shall be based upon the zoning adopted in the smart growth zoning district or
289 starter home zoning district, and consistent with either the city or town's comprehensive housing
290 plan or housing production plan, if any, or the housing production summary submitted in
291 accordance with section 8.

292 (b) The commonwealth shall pay from the trust fund a one-time density
293 bonus payment to each city or town with an approved smart growth zoning district and a one-

294 time production bonus payment to each city or town with an approved starter home zoning
295 district. This payment shall be \$3,000 for each housing unit of new construction created in the
296 smart growth zoning district and \$3,000 for each housing unit of new construction created in the
297 starter home zoning district. The amount due shall be paid on a unit-by-unit basis in accordance
298 with department regulations, upon submission by a city or town of proof of issuance of a
299 building permit for a particular housing unit or units within the district.

300 (c) The executive office of environmental affairs, the executive office of
301 transportation, the department of housing and community development and the secretary of
302 administration and finance shall, when awarding discretionary funds, use a methodology of
303 awarding such funds that favors cities or towns with approved smart growth zoning districts or
304 starter home zoning districts and other approved zoning policies or initiatives that encourage
305 increased affordable housing production in the commonwealth including, but not limited to,
306 inclusionary zoning.

307 Section 10. A city or town may adopt, in accordance with the regulations of the
308 department, design standards applicable to projects undergoing review by the approving
309 authority, to ensure that the physical character of development within the smart growth zoning
310 district or starter home zoning district is complementary to adjacent buildings and structures and
311 is consistent with the city or town's comprehensive housing plan or housing production plan, if
312 any, and any applicable master plan or plans for the city or town. Such standards may address the
313 scale and proportions of buildings, the alignment, the width and grade of streets and sidewalks,
314 the type and location of infrastructure, the location of building and garage entrances, off-street
315 parking, the protection of significant natural site features, the location and design of on-site open
316 spaces, exterior signs and buffering in relation to adjacent properties. In a smart growth zoning

317 district, the standards shall provide for high-density quality development consistent with the
318 character of building types, streetscapes and other city or town features traditionally found in
319 densely settled areas of the city or town or in the region of the city or town.

320 A design standard shall not be adopted if it will add unreasonable costs to
321 residential or mixed-use developments. A design standard shall not unreasonably impair the
322 economic feasibility of proposed projects. The department may disapprove a request for the
323 determination of eligibility for a smart growth zoning district or starter home zoning district on
324 account of a design standard adding such unreasonable costs or unreasonably impairing such
325 feasibility.

326 SECTION XX. Section 11 of said chapter 40R, as so appearing, is hereby
327 amended by striking out, in line 2, the words “district zoning” and inserting in place thereof the
328 following words:- zoning district or starter home zoning district.

329 SECTION XX. Said section 11 of said chapter 40R, as so appearing, is hereby
330 further amended by inserting after the word “district”, in line 11, the following words:- or starter
331 home zoning district.

332 SECTION XX. Said section 11 of said chapter 40R, as so appearing, is hereby
333 further amended by inserting after the word “zoning”, in line 17, the following words:- district
334 or starter home zoning district.

335 SECTION XX. Said section 11 of said chapter 40R, as so appearing, is hereby
336 further amended by inserting after the word “district”, in lines 70, 74 and 128, the following
337 words:- or starter home zoning district.

338 SECTION XX. Said chapter 40R is hereby amended by striking out section 12,
339 as so appearing, and inserting in place thereof the following section:-

340 Section 12. The department shall be responsible for the administration, review,
341 and reporting on the smart growth zoning district and starter home zoning district programs as
342 provided in this chapter. The department shall undertake or cause to be undertaken an annual
343 review and the preparation of a report on the programs set forth in this chapter and may require
344 data to be provided by cities and towns with smart growth zoning districts or starter home zoning
345 districts. The report shall be prepared on the basis of such data and shall be made available to
346 the general public and submitted to the general court annually, not later than November 15 of
347 each year, and shall cover the status of the program through the end of the prior fiscal year. The
348 report shall identify and describe the status of cities and towns that are actively seeking letters of
349 eligibility. It shall identify approved smart growth zoning districts and starter home zoning
350 districts and the amounts and anticipated timing of one-time density bonus payments and one-
351 time production bonus payments during the prior and current fiscal year. It shall summarize the
352 amount of land areas zoned for particular types of projects in both proposed and approved
353 districts, the number of projects being reviewed by cities and towns under section 11, including
354 the number and type of proposed residential units, the number of building permits issued, the
355 number of completed housing units and their type, and it shall set out the one-time density bonus
356 payments and one-time production bonus payments made to each city or town. For the then
357 current and the immediately succeeding fiscal years it shall make estimates for the: (i) number
358 and size of proposed new districts; (ii) potential number of residential units to be allowed in new
359 districts; and (iii) anticipated construction activity.

360 SECTION XX. Said chapter 40R is hereby further amended by striking out
361 section 14, as so appearing, and inserting in place thereof the following section:-

362 Section 14. If, within 3 years, no construction has been started within the smart
363 growth zoning district or starter home zoning district, the department shall require the cities and
364 towns to repay to the department all monies paid to the city or town under this chapter for said
365 smart growth zoning district or starter home zoning district. Said 3 years shall commence on the
366 date of the payment of the zoning incentive payment for said smart growth zoning district or
367 starter home zoning district. All monies repaid to the department under this section shall be
368 returned to the trust fund.