

SENATE No. 2856

Senate, July 29, 2020 -- Text of the Senate amendment (Senator Collins) to the Senate Bill enabling partnerships for growth (Senate, No. 2842).

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

1 by adding the following new sections:

2 SECTION XX. SECTION 1. Chapter 665 of the acts of 1956, as amended, is hereby
3 amended by inserting at the end of the fourth paragraph the following sentence:-

4 The zoning commission may establish rules and regulations for its own procedures not
5 inconsistent with this act and may, from time to time, establish subcommittees as it sees fit.

6 SECTION 2. Section 2 of chapter 665 of the acts of 1956, as amended, is hereby
7 amended by striking out the first paragraph and inserting in place thereof the following
8 paragraph:-

9 For the purpose of promoting the health, safety, convenience, morals and welfare of its
10 inhabitants, the city of Boston may, through zoning regulations adopted by its zoning
11 commission, regulate and restrict the following: the height, number of stories and size of
12 buildings and structures, size and width of lots, percentage of a lot that may be occupied, the size
13 of yards, courts and other open spaces, the density of population, and the location and use of
14 buildings, structures, and land for trade, industry, agriculture, residence or other purposes. In
15 order to protect and enhance the public welfare and meet planning goals so that neighborhoods

16 will have a range of housing options with sizes, types, and levels of affordability to support a
17 diverse populace, the zoning commission may also adopt inclusionary zoning regulations or
18 amendments to establish and further Inclusionary Development for income restricted housing in
19 residential developments.

20 SECTION 3. Section 2 of chapter 665 of the acts of 1956, as amended, is hereby
21 amended by striking out the third paragraph and inserting in place thereof the following
22 paragraph:-

23 A zoning regulation shall be designed among other purposes to lessen congestion in the
24 streets; to conserve health; to secure safety from fire, panic and other dangers; to provide
25 adequate light and air; to prevent overcrowding of land; to avoid undue concentration of
26 population; to facilitate the adequate provision of a range of housing options with sizes, types,
27 and levels of affordability to support a diverse populace, transportation, water, sewerage,
28 schools, parks and other public requirements; to conserve the value of land and buildings; to
29 encourage the most appropriate use of land throughout the city; and to preserve and increase its
30 amenities.

31 SECTION 4. Section 8 of chapter 665 of the acts of 1956, as amended, is hereby
32 amended by striking out the last sentence in the sixth paragraph and inserting in place thereof the
33 following sentence:-

34 The board shall establish rules and regulations for its own procedures not inconsistent
35 with this act and may, from time to time, establish subcommittees as it sees fit.

36 SECTION 5. Section 8 of chapter 665 of the acts of 1956, as amended, is hereby
37 amended by striking the word "her or him" in the last sentence of the last paragraph and inserting
38 in place thereof the following:-

39 him/her/them

40 SECTION 6. Section 15 of chapter 665 of the acts of 1956, as amended, is hereby
41 amended by striking out the meaning of "New large-scale commercial real estate development"
42 and inserting in place thereof the following meaning:-

43 any development in the city in which development is proposed to erect a building or
44 structure having a gross floor area, exclusive in both cases of all accessory parking garage space,
45 in excess of one hundred thousand square feet or other threshold as established from time to time
46 by the zoning commission, or to enlarge or extend a building or structure so as to increase its
47 gross floor area, exclusive of all accessory garage space in both cases, to more than one hundred
48 thousand square feet or other threshold as established from time to time by the zoning
49 commission, or to substantially rehabilitate a building or structure or portion thereof having, or to
50 have, after rehabilitation, a gross floor area, exclusive of all accessory parking garage space in
51 both cases, of more than one hundred thousand square feet or other threshold as established from
52 time to time by the zoning commission, which square footage is intended for one or more of the
53 following "exaction" uses: (1) office, (2) retail business or service, (3) institutional or
54 educational, (4) hotel or motel, but not including an apartment hotel or lodging house, or (5)
55 other uses as determined by the zoning commission.

56 SECTION 7. Section 15 of chapter 665 of the acts of 1956, as amended, is hereby
57 amended by striking out the meaning of "Substantially rehabilitated" and inserting in place
58 thereof the following meaning:-

59 to cause alterations or repairs to be made to a building or structure, constituting a new
60 large-scale commercial real estate development, within any period of twelve months, costing in
61 excess of fifty per cent of the assessed value of the building or structure as it appears on the
62 assessment rolls of the city as of the first day of January preceding the date of application to the
63 zoning commission for any zoning map or text amendment to authorize such alterations or
64 repairs, the filing of a Project Notification Form pursuant to Article 80 of the Boston zoning
65 code, or the date of application for the building permit for such alterations or repairs, whichever
66 is earlier.

67 SECTION 8. Section 15 of chapter 665 of the acts of 1956, as amended, is hereby
68 amended by inserting the term "Inclusionary Development" and establishing the following
69 meaning:-

70 a set of programs, policies, ordinances and regulations designed to create or incent the
71 creation of income restricted housing and further fair housing by requiring development projects
72 meeting thresholds established by the city of Boston to include income restricted housing on-site,
73 construct income restricted housing off-site or contribute financially to the construction of
74 income restricted housing or a city fund designated for such purpose.

75 SECTION 9. Section 15 of chapter 665 of the acts of 1956, as amended, is hereby
76 amended by inserting the term "income restricted housing" and establishing the following
77 meaning:-

78 a unit of housing, whether rental, condominium or cooperative, a single or multi-family
79 owner occupied home, or other dwelling type, for which the occupancy cost to the resident(s)
80 thereof does not exceed the percentage of the maximum income of an income eligible occupant
81 household, attributed to that unit of housing, as defined by any state or federal agency, authority,
82 department, or similar instrumentality providing financial assistance to reduce the occupancy
83 cost of housing.

84 SECTION 10. Section 16 of chapter 665 of the acts of 1956, as amended, is hereby
85 amended by striking out the first paragraph and inserting in place thereof the following
86 paragraph:-

87 Notwithstanding the provisions of any general or special law or rule to the contrary, in
88 the city of Boston the zoning commission is hereby authorized to adopt zoning regulations or
89 amendments thereto for the purpose of mitigating the effects of new large-scale commercial real
90 estate development on the health and welfare of low and moderate income residents of Boston
91 due to the unavailability of affordable housing in the city of Boston. Such regulations shall
92 provide that, with respect to new large-scale commercial real estate development, any relief
93 granted under the provisions of the zoning code, existing or as amended, including without
94 limitation the granting of a conditional use permit, exception, zoning map or text amendment or
95 variance, or any approvals granted pursuant to Article 80 of the Boston zoning code, shall be
96 conditioned upon action, or promised action, by the developer seeking to obtain such relief or
97 approvals to contribute an affordable housing exaction, to mitigate the effects which new large-
98 scale commercial real estate development projects may have upon the availability of affordable
99 housing within the city, which action shall be, the contribution towards the creation of affordable
100 housing as determined by the zoning commission pursuant to duly adopted regulation.

101 Affordable housing may be a portion of a housing development which includes residents of
102 mixed income levels. The regulations shall provide that the zoning relief or approvals necessary
103 to build new large-scale commercial real estate developments are distinct from any other relief or
104 approvals granted under the provisions of the zoning code.

105 SECTION 11. Section 16 of chapter 665 of the acts of 1956, as amended, is hereby
106 amended by striking out “Boston redevelopment authority” in the first sentence of the second
107 paragraph and inserting in place thereof the following:-

108 Boston Redevelopment Authority

109 SECTION 12. Section 16 of chapter 665 of the acts of 1956, as amended, is hereby
110 amended by inserting after the second sentence of the second paragraph the following sentence:-

111 The requirements for creation of housing in kind or payments made over a period of time
112 shall be determined by the regulations.

113 SECTION 13. Section 16 of chapter 665 of the acts of 1956, as amended, is hereby
114 amended by striking out the third paragraph in its entirety.

115 SECTION 14. Section 16 of chapter 665 of the acts of 1956, as amended, is hereby
116 amended by striking out the fourth paragraph and inserting in place thereof the following
117 paragraph:-

118 Such regulations shall provide that the measured value of the affordable housing exaction
119 shall be determined on the basis of a fixed dollar amount per square foot of gross floor area
120 devoted to exaction uses in excess of one hundred thousand square feet of gross floor area
121 devoted to exaction uses or other such threshold as determined by the zoning commission,

122 exclusive in both cases of all accessory parking garage space, of the new large-scale commercial
123 real estate development, as determined by the zoning commission upon written recommendations
124 of the BRA, which recommendations shall include an analysis of the following: (1) economic
125 trends, such as real estate development activity, commercial rents per square foot, employment
126 growth and inflation rates; (2) housing trends measured in terms of vacancy rates for affordable
127 housing available to low and moderate income residents, and production statistics for new
128 dwelling units; and (3) any other such information which the BRA deems appropriate for
129 consideration; provided, however, that the zoning commission shall be authorized to decrease the
130 measured value of the above affordable housing exaction at any time upon consideration of the
131 factors above; provided further, that annually on each July 1st, the current housing exaction in
132 dollars per square foot (\$9.03 as of the date of adoption of this amendment) as set by the zoning
133 commission shall be automatically adjusted by the BRA to reflect the combined index; and
134 provided further, that the zoning commission may adopt additional adjustments based on BRA
135 recommendations pursuant to the analysis as required above. No such increase shall apply to any
136 new large-scale commercial real estate development for which an application for a conditional
137 use permit, exception, zoning map or text amendment or variance, Project Notification Form or
138 other Article 80 application has been filed with the appropriate governmental authority prior to
139 the effective date of such increase or for which an application for a planned development area
140 has been filed with the BRA prior to the effective date of such increase, whichever occurs first;
141 provided, however, that the zoning commission may require increased exactions for any
142 development project which seeks additional relief through the filing of a Notice of Project
143 Change, amendment of a planned development area, or other such zoning relief as specified by
144 the zoning commission. Any affordable housing exaction payment shall be made to the

145 neighborhood housing trust, as created and administered pursuant to section twenty. The zoning
146 commission is authorized to promulgate such regulations or rules as will effectuate the purposes
147 of this section.

148 SECTION 15. Section 16A of chapter 665 of the acts of 1956, as amended, is hereby
149 deleted in its entirety.

150 SECTION 16. Section 17 of chapter 665 of the acts of 1956, as amended, is hereby
151 amended by striking out the section in its entirety and inserting in place thereof the following
152 section:-

153 Notwithstanding any provisions of general or special law or rule to the contrary, in the
154 city of Boston the zoning commission is hereby authorized to adopt zoning regulations or
155 amendments thereto for the purpose of mitigating the effects of new large-scale commercial real
156 estate development on the health and welfare of low and moderate income residents of the city of
157 Boston due to the unavailability of employment opportunities for such low and moderate income
158 residents of Boston. Such regulations shall provide that any relief granted under the provisions of
159 the zoning code, existing or as amended, including without limitation the granting of a
160 conditional use permit, exception, zoning map or text amendment or variance, or review and
161 approval under Article 80 of the Boston zoning code, shall be conditioned upon action, or
162 promised action, by the developer seeking to obtain such relief or approvals to contribute an
163 employment exaction to mitigate the effects which new large-scale commercial real estate
164 development projects may have upon the availability of jobs for low and moderate income
165 residents within the city, which action shall be the contribution towards the creation of job
166 training programs for the training of low and moderate income residents of the city as

167 determined by the zoning commission pursuant to duly adopted regulations. The regulations
168 shall provide that the zoning relief or approvals necessary to build new large-scale commercial
169 real estate developments are distinct from any other relief or approvals granted under the
170 provisions of the zoning code.

171 The zoning commission shall determine by regulation that the value of an employment
172 exaction shall be measured on the basis of dollars per square foot devoted to exaction uses in
173 excess of an amount as established from time to time by the zoning commission devoted to
174 exaction uses, exclusive in both cases of all accessory parking garage space, in the new large-
175 scale commercial real estate development project or other such threshold as determined by the
176 zoning commission. The developer of any new large-scale commercial real estate development
177 project, in lieu of contributing towards the creation of job training programs or similar projects
178 referred to in the preceding paragraph, may make a payment or payments of an amount of money
179 equal to the measured value of the employment exaction to the neighborhood jobs trust
180 authorized by section twenty of this chapter over a payment period to be established by
181 regulation of the zoning commission, for the purpose of mitigating the impact of new large-scale
182 commercial real estate development projects.

183 Such regulations shall provide that the measured value of the employment exaction shall
184 be determined on the basis of a fixed dollar amount per square foot of gross floor area devoted to
185 exaction uses in excess of one hundred thousand square feet devoted to exaction uses, exclusive
186 in both cases of all accessory parking garage space or other such threshold as determined by the
187 zoning commission, in the new large-scale commercial real estate development, as determined
188 by the zoning commission upon written recommendations of the BRA, which recommendations
189 shall include an analysis of the following: (1) economic trends, such as real estate development

190 activity, commercial rents per square foot, employment growth and inflation rates; (2)
191 employment trends such as unemployment rates and statistics on the availability and use of job
192 training programs; and (3) any other such information which the BRA deems appropriate for
193 consideration; provided, however, that the zoning commission shall be authorized to decrease the
194 measured value of the above employment exaction at any time upon consideration of the factors
195 above; provided, further, that annually on each July 1st, the current employment exaction in
196 dollars per square foot (\$1.78 as of the date of adoption of this amendment) as set by the zoning
197 commission shall be automatically adjusted by the BRA to reflect the combined index; and
198 provided further, that the zoning commission may adopt additional adjustments based on BRA
199 recommendations pursuant to the analysis as required above. No such increase shall apply to any
200 new large-scale commercial real estate development for which an application for a conditional
201 use permit, exception, zoning map or text amendment or variance, Project Notification Form or
202 other Article 80 application has been filed with the appropriate governmental authority prior to
203 the effective date of such increase or for which an application for a planned development area
204 has been filed with the BRA prior to the effective date of such increase, whichever occurs first;
205 provided, however, that the zoning commission may require increased exactions for any
206 development project which seeks additional relief through the filing of a Notice of Project
207 Change, amendment of a planned development area, or other such zoning relief as specified by
208 the zoning commission. Any employment exaction shall be paid into the neighborhood jobs trust
209 as created pursuant to section twenty of this chapter. The zoning commission is authorized to
210 promulgate such regulations or rules, as will effectuate the purpose of this provision.

211 SECTION 17. Section 17A of chapter 665 of the acts of 1956, as amended, is hereby
212 deleted in its entirety.

213 SECTION 18. Section 18 of chapter 665 of the acts of 1956, as amended, is hereby
214 amended by striking out the entire section and inserting in place thereof the following:-

215 (a) The zoning commission is further authorized to promulgate zoning regulations and
216 amendments thereto for the purpose of mitigating the effects of new large-scale commercial real
217 estate development in the city of Boston on the availability of affordable housing or employment
218 opportunities for low and moderate income residents of Boston; provided, however, that such
219 regulations may not be in force simultaneously with those authorized by sections sixteen and
220 seventeen. Such regulations and amendments may provide that any relief granted under the
221 provisions of the zoning code, existing or amended, including without limitation the granting of a
222 conditional use permit, exception, zoning map or text amendment or variance, or review and
223 approval under Article 80 of the Boston zoning code or other such threshold as determined by
224 the zoning commission, shall be conditioned upon action or promised action by the developer
225 seeking to create such new large-scale commercial real estate development project or obtain such
226 relief to mitigate the effects which new large-scale commercial real estate development may
227 have upon low and moderate income residents of the city as determined by the zoning
228 commission pursuant to duly adopted regulations. Such regulations or amendments shall state the
229 specific improvements or amenities to be provided as a condition required for the grant of zoning
230 relief or approvals and the zoning relief or approvals to be granted. The regulations shall provide
231 that the zoning relief or approvals necessary to build new large-scale commercial real estate
232 developments are distinct from any other relief granted under the provisions of the zoning code.

233 (b) Any such regulations and amendments must provide that (1) the present and future
234 economic burden of any such improvements or amenities shall not exceed the sum of the present
235 value of the prevailing affordable housing exaction as established by the zoning commission (at

236 the time of adoption of this amendment, \$9.03) per square foot paid in equal and annual
237 installments over a seven year period plus the present value of the prevailing employment
238 exaction as established by the zoning commission (at the time of adoption of this amendment,
239 \$1.78) per square foot paid in equal and annual installments over a two year period, each
240 commencing on the date of the issuance of the building permit, for each square foot of gross
241 floor area devoted to exaction uses in excess of one hundred thousand square feet devoted to
242 exaction uses, exclusive in both cases of all accessory parking garage space, or other such
243 threshold as determined by the zoning commission, in the new large-scale commercial real estate
244 development; provided, however, that annually on each July 1st, the affordable housing exaction
245 and the employment exaction shall be automatically adjusted by the BRA to reflect the combined
246 index; and provided further, that the zoning commission may adopt additional adjustments based
247 on BRA recommendations pursuant to the analysis as required above.

248 SECTION 19. Section 19 of chapter 665 of the acts of 1956, as amended, is hereby
249 amended by striking out the section in its entirety and inserting in place thereof the following
250 section:-

251 Notwithstanding any provision of general or special law or rule to the contrary, (a)
252 articles 26, 26A and 26B of the Boston zoning code; (b) all zoning code amendments, zoning
253 map amendments, zoning variances, conditional use permits and zoning exceptions granted or
254 planned development areas approved or enacted prior to the effective date of any zoning code
255 amendment or zoning commission regulation pursuant to this act and in any way dependent
256 upon, or related to, articles 26, 26A or 26B of the Boston zoning code, or any of them, which
257 have not been appealed or challenged on the grounds of the invalidity of said articles, or any one
258 of them, in judicial proceedings timely and properly commenced, prior to the enactment of this

259 act or which have been so appealed or challenged in judicial proceedings which have been
260 dismissed or otherwise adjudicated in favor of the developer prior to the enactment of this act;
261 (c) all zoning code amendments, zoning map amendments, zoning variances, conditional use
262 permits, or planned development areas approved and zoning exceptions granted or enacted prior
263 to the effective date of any zoning code amendment or zoning commission regulations pursuant
264 to this act and in any way dependent upon or related to, articles 26, 26A or 26B of the Boston
265 zoning code, or any of them, which have been appealed or challenged on the grounds of the
266 invalidity of said articles, or any of them, in judicial proceedings timely and properly
267 commenced prior to the enactment of this act and which have not been dismissed or otherwise
268 adjudicated in favor of the developer prior to the enactment of this act; (d) any development
269 impact project exactions, development impact project contributions and jobs contribution grants,
270 as those terms are defined in said articles, and agreements for such exactions, contributions and
271 grants related to or dependent upon any of the zoning actions described in clause (b) and (c); and
272 (e) any additional actions, zoning variances, conditional use permits, or planned development
273 areas approved and zoning exceptions granted pursuant to, or in connection with, any
274 development contemplated by any zoning map amendment, zoning code amendment or
275 agreement described in clauses (b), (c) or (d), whether or not subsequent to the date of enactment
276 of this act, are hereby ratified, validated and confirmed, insofar as any such amendments,
277 variances, permits, exceptions, exactions, contributions, grants, agreements, and other actions
278 may be invalid by reason of any invalidity of said articles or any of them. Any new large-scale
279 commercial real estate development which is the subject of any agreement ratified, validated and
280 confirmed by this section, and any additional actions, zoning variances, conditional use permits,
281 zoning exceptions, and zoning code and text amendments ratified, validated and confirmed by

282 this section, shall be governed by any such agreement and by the provisions of said articles 26,
283 26A and 26B of the Boston zoning code, or any of them, pursuant to which said agreements were
284 made or planned development areas approved, and shall not be subject to any zoning regulations
285 or amendments hereafter adopted by the zoning commission pursuant to this act.
286 Notwithstanding the foregoing, no new large-scale commercial real estate development shall be
287 subject to the terms and provisions of sections 26-3(2)(c) of Article 26, section 26A-3(2)(c) of
288 Article 26A or section 26B-3(1)(c) of Article 26B of the Boston zoning code.

289 SECTION 20. Section 20 of chapter 665 of the acts of 1956, as amended, is hereby
290 amended by striking the word “him” in the fourth sentence of the first paragraph and inserting in
291 place thereof the following:- him/her/them

292 SECTION 21. Section 21 of chapter 665 of the acts of 1956, as amended, is hereby
293 amended by striking the first full paragraph after the definitions and inserting in place thereof the
294 following paragraph:-

295 Notwithstanding any general or special law to the contrary, in the city of Boston the
296 zoning commission shall adopt zoning regulations or amendments thereto for the purpose of
297 mitigating the adverse impact of new real estate development on the public health, safety,
298 convenience, and welfare of its inhabitants, including, but not limited to, the transportation
299 network, infrastructure, environment, urban design components, or historic resources in the city
300 of Boston. The regulations shall provide that, with respect to new real estate development, any
301 approval or relief granted under the provisions of the zoning code, existing or as amended,
302 including without limitation the granting of a conditional use permit, exception, zoning map or
303 text amendment or variance, or approvals pursuant to Article 80 of the zoning code shall be

304 conditioned upon action, or promised action, by the developer seeking to obtain the relief or
305 approvals, to undertake measures, as required by the BRA, to mitigate, limit, or minimize the
306 impact within the city.

307 SECTION 22. Chapter 665 of the acts of 1956, as amended, is hereby amended by
308 inserting the following section 22:

309 Notwithstanding the provision of any general or special law or rule to the contrary, in
310 order to protect and enhance the public health, safety and welfare in accordance with the goal of
311 this act, to meet fair housing and planning goals so that neighborhoods will have a range of
312 housing options to support a diverse populace, the city of Boston zoning commission is hereby
313 authorized to adopt inclusionary zoning regulations or amendments to set aside, or to facilitate
314 the creation or preservation of, income restricted housing. Such regulations or amendments shall
315 be adopted in a manner consistent with the planning and zoning authorities, standards and
316 processes of the city of Boston, BRA and zoning commission except as specified in this section.

317 The zoning commission shall only adopt Inclusionary Development or an amendment
318 thereto, following a recommendation of the Board of the BRA, and a vote or inaction of the
319 Boston city council, as described herein. After a vote of the BRA Board, the BRA shall provide
320 notice to the city council of the Inclusionary Development or amendment thereto. The city
321 council shall have, from date of notification, sixty (60) days to reject the Inclusionary
322 Development or amendment thereto, by a two thirds vote of all its members. If the council fails
323 to reject the Inclusionary Development or amendment thereto or should the council take no
324 action within the specified sixty (60) days, then the Inclusionary Development or amendment

325 thereto shall proceed to the zoning commission, which shall notice and schedule a hearing in
326 accordance with section 3 of chapter 665 of the acts of 1956, as amended.

327 Such Inclusionary Development or amendment thereto may include one or more of the
328 following requirements that, regardless of the need for zoning relief, residential development
329 projects, as defined by the zoning commission, must: (1) include a percentage of the units or a
330 percent of square footage on-site as income restricted dwelling units, (2) produce or cause to be
331 produced income restricted units off-site, or, (3) in lieu of including or producing such units,
332 make a monetary or in-kind contribution toward the creation or preservation of income restricted
333 housing. Such requirements may vary based on the zoning district of the new project, or such
334 other factors determined by the zoning commission to be necessary or advisable to achieve the
335 goal of this act.

336 In making a recommendation, the BRA shall consider: (1) Boston housing cost trends; (2)
337 market and income restricted housing production goals; (3) providing housing at a cost not
338 generally available in the city; (4) the city's goal of maintaining racial and economic diversity in
339 the city, and affirmatively furthering fair housing for members of protected classes and the larger
340 community; (5) financial and other considerations regarding the production and cost of market-
341 rate residential development projects and income restricted housing units; and other factors as
342 determined by the zoning commission; provided that, the zoning commission may waive such
343 analysis upon finding that proposed regulations are substantially similar in nature, enact clerical
344 or procedural adjustments, clarify existing requirements, support adoption of a citywide
345 regulation into neighborhood or planned development area zoning, or are otherwise reflected in
346 documented consideration of such factors by the zoning commission, the BRA or the city of
347 Boston within three years of submission.

348 SECTION 23. Chapter 665 of the acts of 1956, as amended, is hereby amended by
349 deleting the fourth paragraph of section 1 and replacing it with the following:

350 The zoning commission and city of Boston shall cause to be made public electronically
351 accessible contact information for members of the zoning commission and meeting minutes.

352 SECTION 24. Chapter 665 of the acts of 1956, as amended, is hereby amended by
353 inserting after section 21 the following section:

354 Section 23. Should any part of this act be found invalid, all valid parts that are severable
355 from the invalid part remain in effect. If any part of this act is found invalid in one or more of its
356 applications, that part remains in effect in all valid applications that are severable from the
357 invalid applications.

358 SECTION 25. This act shall take effect upon its passage.