

**SENATE . . . . . No. 799**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***James B. Eldridge***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act creating affordable housing in every community.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/14/2019</i>

**SENATE . . . . . No. 799**

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 799) of James B. Eldridge, Denise Provost, Mary S. Keefe and Mike Connolly for legislation to create affordable housing in every community. Housing.

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**The Commonwealth of Massachusetts**

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

An Act creating affordable housing in every community.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. To provide for a capital outlay program to increase production of affordable  
2 housing units in the commonwealth, the sums set forth in section 1A, for the several purposes  
3 and subject to the conditions specified in this act, are hereby made available subject to the laws  
4 regulating the disbursement of public funds.

5           SECTION 1A.

6           EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

7           Department of Housing and Community Development

8           XXXX-XXXX For a program of loans or grants for the production of affordable housing  
9 units; provided however, that affordable housing units shall mean a housing unit to be rented or  
10 owned by families and individuals whose income at initial occupancy is no more than 50 per cent  
11 of the area median income as determined by the federal department of housing and urban

12 development guidelines and adjusted for family size and that thereafter such units shall be rented  
13 or sold, subject to such restrictions on appreciation as determined by the municipality to be  
14 reasonable and necessary to maintain long term affordability, to families or individuals at  
15 incomes of no more than 50 per cent of the area median income; provided, however, that not less  
16 than \$250,000,000 shall be distributed to public housing authorities established pursuant to  
17 section 3 of chapter 121B .....\$500,000,000.

18 SECTION 2. To provide for a program of affordable housing production incentives, the  
19 sums set forth in section 2A are hereby made available, subject to the laws regulating the  
20 disbursement of public funds. These sums shall be in addition to any amounts previously  
21 authorized and made available for these purposes.

22 SECTION 2A.

23 EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

24 Department of Housing and Community Development

25 7004-8016 For the Smart Growth Housing Trust Fund established by section 35AA of  
26 chapter 10 of the General Laws to establish a competitive grant program pursuant to section 3 of  
27 chapter 40X of the General Laws and for incentive payments pursuant to section 4 of chapter  
28 40X of the General Laws.....\$10,000,000

29 SECTION 3. The General Laws are hereby amended by inserting after chapter 40W the  
30 following chapter:-

31 CHAPTER 40X. AFFORDABLE HOUSING PRODUCTION INCENTIVE PROGRAM

32 Section 1. As used in this chapter, the following words shall have the following meanings  
33 unless the context clearly requires otherwise:

34 “Affordable housing unit”, a housing unit to be rented or owned by families and  
35 individuals whose income at initial occupancy is no more than 50 per cent of the area median  
36 income as determined by the federal department of housing and urban development guidelines  
37 and adjusted for family size and that thereafter such units shall be rented or sold, subject to such  
38 restrictions on appreciation as determined by the municipality to be reasonable and necessary to  
39 maintain long term affordability, to families or individuals at incomes of no more than 50 per  
40 cent of the area median income.

41 “Department”, the department of housing and community development.

42 “Developable land area”, shall have the same meaning as in section 2 of chapter 40R.

43 “Eligibility period”, the five year period immediately preceding receipt of a  
44 municipality’s affordable housing production incentive application by the department; provided,  
45 however, that no eligibility period shall begin before January 1, 2020.

46 “Eligible municipality,” a city or town that has increased the share of affordable housing  
47 units located in the city or town by 1 per cent over the most recent eligibility period.

48 “Trust fund”, the smart growth housing trust fund established by section 35AA of chapter  
49 10.

50 Section 2. (a) In order to qualify as an eligible municipality, a city or town shall submit  
51 an application to the department including the following information:

52 (1) the name and population of the municipality;

- 53 (2) the total number of housing units in the municipality;
- 54 (3) the per cent of total affordable housing units on the date five years prior to the date of  
55 the application;
- 56 (4) the per cent of total affordable housing units on the date of the application;
- 57 (5) a list of affordable housing units constructed during the eligibility period; and
- 58 (6) a list of current or future development plans for additional affordable housing units, if  
59 any.

60 (b) If the number of affordable housing units in a municipality represented as a per cent  
61 of total housing units has increased by not less than 1 per cent during the eligibility period, the  
62 department shall certify the municipality as an eligible municipality; provided, however that the  
63 department may reject a municipality's application if it has reason to doubt the accuracy of the  
64 information provided by the municipality.

65 (c) The department shall create a process for a municipality to appeal the department's  
66 rejection of a municipality's application.

67 Section 3. (a) Each municipality with not less than 5,000 permanent residents shall  
68 identify and secure a developable land area for affordable housing unit development and may use  
69 its boards and committees for assistance, including, but not limited to, an affordable housing  
70 trust, a community preservation committee or a housing authority.

71 (b) After identifying a developable land area, a municipality shall create a smart growth  
72 zoning district pursuant to chapter 40R that is superimposed directly over the identified  
73 developable land.

74 (c) After identifying a developable land area, a municipality may, pursuant to section  
75 35AA of chapter 10: (i) apply to the department for a technical assistance grant in an amount not  
76 to exceed \$25,000 to guide the process for municipal approval, acquire the land and receive  
77 development subsidies; (ii) apply to the department for a grant in an amount not to exceed  
78 \$25,000 to study the traffic effects of proposed developments of affordable multifamily housing  
79 units in the smart growth zoning district; and (iii) apply to the department for a grant in an  
80 amount not to exceed \$25,000 to complete a nexus study to identify a proposed linkage fee  
81 amount for a specific development project.

82 Section 4. (a) Each eligible municipality shall be entitled to payments pursuant to this  
83 section.

84 (1) The commonwealth shall pay from the trust fund an affordable multifamily housing  
85 development incentive payment, according to the following schedule:

Increase in per cent of housing units	Payment
that qualify as affordable multifamily	
housing units over the eligibility period	
1% - 2%	\$50,000
2% - 5%	\$100,000

91 The affordable multifamily housing development incentive payment shall be payable  
92 upon confirmation of certifying the municipality as an eligible municipality under this chapter.

93 (2) The commonwealth shall pay from the trust fund a one-time multifamily housing  
94 payment to each eligible municipality. This payment shall be \$10,000 for each affordable  
95 multifamily housing unit of new construction created in the eligible municipality. The amount  
96 due shall be paid on a unit-by-unit basis in accordance with department regulations.

97 (b) Each eligible municipality shall be entitled to adopt the provisions of section 14 of  
98 chapter 64D.

99 SECTION 4. Section 35AA of chapter 10 of the General Laws, as appearing in the 2016  
100 Official Edition, is hereby amended by inserting after the word “40R” in line 6 the following:-

101 “and chapter 40X”.

102 SECTION 5. Section 1 of chapter 64D of the General Laws, as appearing in the 2016  
103 Official Edition, is hereby amended by inserting after the word “dollars;” in line 14, the  
104 following words:-

105 provided, however, that when the consideration of the interest or property conveyed,  
106 exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale,  
107 exceeds one million dollars, for each additional five hundred dollars or fractional part thereof,  
108 four dollars; and

109 by inserting after the word “consideration”, in line 16, the following words:-

110 and three dollars for each five hundred dollars or fractional part of said consideration  
111 over one million dollars,

112 SECTION 6. Chapter 64D of the General Laws is hereby amended by adding the  
113 following section:-

114 Section 14. Excise taxes collected pursuant to section 1 where the consideration of the  
115 interest or property conveyed, exclusive of the value of any lien or encumbrance remaining  
116 thereon at the time of the sale, exceeds one million dollars, shall be distributed in the following  
117 manner: (a) if the city or town where the property is located is an eligible municipality pursuant  
118 to chapter 40X and has established a Municipal Housing Trust Fund pursuant to section 55C of  
119 chapter 44, chapter 482 of the Acts of 1991, or other municipally established Affordable Housing  
120 Trust Fund, 50 per cent of the excise collected shall be deposited in said trust fund and 50 per  
121 cent of the excise shall be deposited in the Affordable Housing Trust Fund established in section  
122 2 of chapter 121D; (b) if the city or town where the property is located is not an eligible  
123 municipality pursuant to chapter 40X or has not established a Municipal Housing Trust Fund  
124 pursuant to section 55C of chapter 44, chapter 482 of the Acts of 1991, or other municipally  
125 established Affordable Housing Trust Fund, 100 per cent of the excise collected shall be  
126 deposited in the Affordable Housing Trust Fund established in section 2 of chapter 121D.

127 SECTION 7. To meet the expenditures necessary in carrying out sections 1 and 1A, the  
128 state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in  
129 an amount to be specified by the governor from time to time but not exceeding, in the aggregate,  
130 \$500,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their  
131 face, Housing Production, Planning and Local Impact Grants Loan Act of 2020, and shall be  
132 issued for a maximum term of years, not exceeding 30 years; provided, however, that all such  
133 bonds shall be payable not later than June 30, 2055. All interest and payments on account of  
134 principal on such obligations shall be payable from the General Fund. Bonds and interest thereon  
135 issued under the authority of this section shall, notwithstanding any other provision of this act, be  
136 general obligations of the commonwealth. An amount not to exceed 2 per cent of the



137 authorizations may be expended by the department of housing and community development for  
138 administrative costs directly attributable to the purposes of this act, including costs of clerical  
139 and support personnel. The director of housing and community development shall file an annual  
140 spending plan with the fiscal affairs division, the house and senate committees on ways and  
141 means, the house and senate committees on bonding, capital expenditures and states assets and  
142 the joint committee on housing which details, by subsidiary, all personnel costs and any  
143 administrative costs charged to expenditures made pursuant to this act.

144 SECTION 8. The General Laws are hereby amended by striking out chapter 40S in its  
145 entirety and inserting in place thereof the following:-

146 CHAPTER 40S.

147 HOUSING PRODUCTION SCHOOL COST REIMBURSEMENT

148 Section 1. As used in this chapter, the following words shall have the following  
149 meanings, unless the context clearly requires otherwise:

150 "Additional chapter 70 aid", for each municipality, an amount calculated by the  
151 department of education equal to the actual increase in chapter 70 aid payments, including, but  
152 not limited to, foundation aid increases and minimum aid increases, that is attributable to the  
153 number of each municipality's eligible students from the school district. In the case of a regional  
154 school district, the amount of additional chapter 70 aid in the region shall be apportioned among  
155 member communities proportionally based upon the number of eligible students from each  
156 member municipality. For any municipality with eligible students from more than 1 school  
157 district, additional chapter 70 aid shall be the sum of the additional chapter 70 aid at the

158 municipal school district plus the municipality's share of additional chapter 70 aid at each district  
159 of which the municipality is a member.

160 "Average actual net school spending per student", for each school district, the actual net  
161 school spending per pupil, as defined by and reported to the department of education, for the  
162 immediately preceding fiscal year.

163 "Division", the division of local services within the department of revenue.

164 "Education percentage", the average across all communities in the commonwealth of total  
165 education expenditures in relation to total municipal expenditures as certified at the end of the  
166 preceding fiscal year by the department of revenue. This percentage shall be the total actual net  
167 school spending of all districts as defined by the department of education divided by the sum of  
168 total General Fund municipal spending and regional school district aid.

169 "Eligible student", a child living in a new smart growth development pursuant to chapter  
170 40R or new affordable housing development pursuant to chapter 40X that is enrolled as of the  
171 prior year in a district or charter school in kindergarten through grade 12, attends a residential or  
172 other school pursuant to special education requirements, attends pre-kindergarten or post 12th  
173 grade sessions pursuant to special education requirements, or attends a school district through the  
174 so-called school choice program, established under section 12B of chapter 76, or a similar  
175 program.

176 "Local smart growth and affordable housing excise tax revenues", for each municipality  
177 the total excise taxes for the subject year on vehicles garaged at a new smart growth development  
178 or new affordable housing development, as calculated by the division.

179 "Local smart growth and affordable housing property tax revenues", for each  
180 municipality, the product of the local levy rate times the amount of assessed valuation due to  
181 new smart growth development and new affordable housing development as certified by the  
182 commissioner of revenue, as calculated by the division.

183 "Local smart growth and affordable housing revenues for education", for each  
184 municipality, the product of the education percentage times the sum of local smart growth and  
185 affordable housing property tax revenues plus local smart growth and affordable housing excise  
186 tax revenues, each for the preceding fiscal year.

187 "New affordable housing development", any new residential development constructed  
188 pursuant to chapter 40X that is subject to the payment of local property taxes.

189 "New smart growth development", any new residential or commercial development,  
190 including the substantial redevelopment of existing properties, subject to the payment of local  
191 property taxes that: (a) occurs in a smart growth zoning district after the adoption of such zoning  
192 by the community, and (b) is permitted under the provisions of the smart growth zoning district.  
193 A redevelopment shall be considered substantial if its cost exceeds 50 per cent of the building's  
194 pre-renovation assessed value or if it constitutes a change in use from nonresidential to  
195 residential.

196 "Smart growth zoning district", a zoning district adopted by a community and approved  
197 by the department of housing and community development which is eligible, and which remains  
198 eligible for density bonus payments under chapter 40R.

199 "Total education cost for eligible students", for each municipality, the product of the total  
200 number of eligible students in the prior fiscal year times the average actual net school spending

201 per student as calculated by the department of education. This calculation shall first be made  
202 separately for each school district attended by eligible students, and the results of such  
203 calculations shall then be summed.

204 Section 2. Subject to appropriation, for each fiscal year commencing with fiscal year  
205 2008, any city or town that has established 1 or more smart growth zoning districts shall receive  
206 school cost reimbursement from the commonwealth. For each fiscal year commencing with  
207 fiscal year 2021, any city or town that is an eligible municipality under chapter 40X shall receive  
208 school cost reimbursement from the commonwealth. These combined reimbursements shall be  
209 equal to the positive difference, if any, between: (i) total education cost for eligible students, and  
210 (ii) the sum of local smart growth and affordable housing revenues for education plus additional  
211 chapter 70 aid. The department of education shall add the smart growth and affordable housing  
212 school cost reimbursement amounts to each district's required net school spending, as defined in  
213 chapter 70. For purposes of the net school spending calculation, the department shall allocate a  
214 municipality's smart growth and affordable housing school cost reimbursement among the  
215 districts to which it belongs in proportion to the number of eligible students from the  
216 municipality attending each district.

217 Section 3. (a) Upon certifying and approving a zoning district as a smart growth zoning  
218 district under chapter 40R or certifying a municipality as an eligible municipality under chapter  
219 40X, the department of housing and community development shall provide a list of all addresses  
220 of new smart growth development within each smart growth zoning district and new affordable  
221 housing development, in this chapter called the smart growth and affordable housing address list,  
222 to the municipality, the department of education, the division of local services within the  
223 department of revenue, and the registry of motor vehicles.

224 (b) The chief executive officer of every municipality with a smart growth zoning district  
225 and every eligible municipality pursuant to chapter 40X shall appoint a reporting officer who  
226 shall be responsible for collecting all relevant data and transmitting it to the appropriate state  
227 agencies in a timely fashion. The reporting officer shall transmit the smart growth and affordable  
228 housing address list to the superintendent of schools of the municipal school district and to the  
229 superintendent of each district or charter school in which local residents were enrolled as of  
230 October 1. Superintendents shall provide to the reporting officer a list of each eligible student  
231 from the school. The reporting officer shall compile these data into a single list of eligible  
232 students, in this chapter called the eligible student list, including the name, address and school  
233 district of each eligible student, and transmit the eligible student list to the department of  
234 education. The reports and list shall be made in a manner and form to be prescribed by the  
235 commissioner of education.

236 (c) Upon receipt of the eligible student list, the department of education shall certify that  
237 all students listed are living in a new smart growth development within a smart growth zoning  
238 district or a new affordable housing development. Upon such certification, the department shall  
239 calculate the additional chapter 70 aid amount, and the total education cost for eligible students  
240 and shall transmit the calculation to the division of local services and to the municipal reporting  
241 officer.

242 (d) The reporting officer shall provide the smart growth and affordable housing address  
243 list to the municipality's assessors, who shall be responsible for providing the reporting officer  
244 with a compilation of all commercial and residential development comprising new smart growth  
245 development in the smart growth zoning district, all affordable housing developments and all  
246 vehicles garaged therein. Said compilation shall contain the addresses of each parcel within the

247 zoning district or affordable housing development, the classification code for each parcel, the  
248 assessed value of the parcel, the number of units at each address, the number of vehicles garaged  
249 at each address, and the excise tax paid on each vehicle. The reporting officer shall transmit the  
250 assessors' list to the registry of motor vehicles and the division of local services. The reports and  
251 lists required by this paragraph shall be made in manner and form to be prescribed by the  
252 commissioner of revenue.

253 (e) Upon receipt of the assessors' list, the registrar of motor vehicles shall verify the  
254 number of vehicles and the excise tax paid on these vehicles and provide that verification to the  
255 division of local services. The division shall use these lists to calculate local smart growth and  
256 affordable housing excise tax revenues, local smart growth and affordable housing property tax  
257 revenues, and local smart growth and affordable housing revenues for education.

258 (f) Upon receipt of all data and calculations required by this section, the division of local  
259 services shall calculate the smart growth and affordable housing school cost reimbursement  
260 pursuant to section 2. Subject to appropriation, the commissioner of revenue shall make a single  
261 payment to each municipality for the amount of its smart growth and affordable housing school  
262 cost reimbursement; but if the appropriation is insufficient to fully fund the cost of the  
263 reimbursement, the division shall calculate the percentage of each municipality's reimbursement  
264 as a share of the statewide reimbursement, and pro-rate each municipality's reimbursement  
265 proportionally.

266 (g) The commissioner of revenue, in consultation with the commissioner of education,  
267 the director of housing and community development, and the registrar of motor vehicles, shall  
268 adopt all regulations necessary to carry out this chapter.

269           Section 4. The commissioners of revenue and education, the director of housing and  
270 community development and the registrar of motor vehicles shall annually report on the cost and  
271 effectiveness of the reimbursement program. This report shall include, but not be limited to, the  
272 number of municipalities which have adopted the provisions of chapters 40R and 40S, the  
273 number of eligible municipalities under chapter 40X, the number of smart growth zoning  
274 districts in the commonwealth, the number of eligible students per municipality, the number of  
275 municipalities receiving the smart growth and affordable housing school cost reimbursement,  
276 and the total reimbursement and per pupil reimbursement provided to each municipality. They  
277 shall provide the report to the chairs of the house and senate committees on ways and means, the  
278 house and senate chairs of the joint committee on housing, the house and senate chairs of the  
279 joint committee on community development and small business, the house and senate chairs of  
280 the joint committee on education, and the secretary of administration and finance.

281           SECTION 9. The department shall promulgate regulations to implement chapter 40X no  
282 later than December 31, 2020.