

**SENATE . . . . . No. 96**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael J. Rodrigues***

*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 improving housing opportunities and the Massachusetts economy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>	
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/23/2019</i>

**SENATE . . . . . No. 96**

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By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 96) of Michael J. Rodrigues and Paul A. Schmid, III for legislation to improve housing opportunities and the Massachusetts economy. Community Development and Small Businesses.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 94 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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

An Act improving housing opportunities and the Massachusetts economy.

*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. Section 9 of chapter 40A, as so appearing, is hereby amended by inserting  
2 after the second paragraph the following paragraph:-

3 Zoning ordinances or by-laws shall permit multifamily development by right in one or  
4 more zoning districts that together cover not less than 1.5% of the developable land area in a city  
5 or town and which, by virtue of its infrastructure, transportation access, existing underutilized  
6 facilities, and/or location, are suitable for multifamily residential development. Zoning  
7 ordinances or by-laws shall establish a housing density for by-right multifamily development in  
8 such zoning districts of not less than twenty (20) dwelling units per acre. As used herein,  
9 “multifamily housing” means apartment or condominium units in buildings which contain or will  
10 contain more than three (3) such units.

11 SECTION 2. Section 9 of chapter 40A, as so appearing, is hereby amended by striking  
12 out, in the fifth paragraph, the words “cluster developments or”.

13 SECTION 3. Section 9 of chapter 40A, as so appearing, is hereby amended by striking  
14 out the sixth paragraph and inserting in place thereof the following paragraph:-

15 Notwithstanding any provision of this section to the contrary, zoning ordinances or by-  
16 laws shall provide that cluster developments shall be permitted by right in residential zoning  
17 districts at the density permitted in the zoning district in which the property is located upon  
18 review and approval by a planning board pursuant to the applicable provisions of sections 81K to  
19 81GG, inclusive, of chapter 41 and in accordance with its rules and regulations governing  
20 subdivision control. Zoning ordinances and by-laws shall not require the submission of a plan  
21 showing a standard subdivision complying with the otherwise applicable requirements of the  
22 ordinance or by-laws as a condition precedent to the approval of a cluster development plan.

23 SECTION 4. Section 81Q of chapter 41, as so appearing, is hereby amended by inserting  
24 after the second sentence the following sentence:-

25 Such rules shall not require the submission of a plan showing a standard subdivision  
26 complying with the requirements of the local zoning ordinance or by-laws as a condition  
27 precedent to the approval of a plan depicting a cluster development pursuant to section 9 of  
28 chapter 40A.

29 SECTION 5. Section 3 of chapter 40A, as so appearing, is hereby amended by inserting  
30 after the tenth paragraph the following paragraph:-

31           Zoning ordinances and by-laws shall classify “accessory dwelling unit,” as defined  
32 herein, as a use permitted by right in all single-family residential zoning districts. No zoning  
33 ordinance or by-law shall unreasonably regulate the location, dimensions, or design of an  
34 accessory dwelling unit on a lot. As used herein, “accessory dwelling unit” is a self-contained  
35 housing unit incorporated within a single-family dwelling or detached accessory structure that is  
36 clearly subordinate to the single-family dwelling and complies with the use, dimensional, and  
37 design requirements of the local zoning ordinance or by-law.

38           SECTION 6. Section 9 of chapter 40A, as so appearing, is hereby amended by striking  
39 out the first paragraph and inserting in place thereof the following paragraph:-

40           Zoning ordinances or by-laws shall provide for specific types of uses which shall only be  
41 permitted in specified districts upon the issuance of a special permit. Special permits may be  
42 issued only for uses which are in harmony with the general purpose and intent of the ordinance  
43 or by-law, shall be subject to general or specific provisions set forth therein, and shall run with  
44 the land and shall not be personal to the applicant or owner of the property. Such permits may  
45 also impose conditions, safeguards and limitations on time or use.

46           SECTION 7. Section 10 of chapter 40A, as so appearing, is hereby amended by striking  
47 out the first paragraph and inserting in place thereof the following paragraphs:-

48           The permit granting authority shall have the power, after public hearing for which notice  
49 has been given by publication and posting as provided in section eleven and by mailing to all  
50 parties in interest, to grant a variance from the terms of the applicable zoning ordinance or by-  
51 law where such permit granting authority specifically finds that a literal enforcement of the  
52 provisions of the ordinance or by-law would result in a practical difficulty. In making its

53 determination, the permit granting authority shall take into consideration the benefit to the  
54 applicant if the variance is granted, as weighed against the detriment to the health, safety, and  
55 welfare of the neighborhood by such grant. In making such determination, the permit granting  
56 authority shall also consider: (1) whether an undesirable change will be produced in the character  
57 of the neighborhood or a significant detriment to nearby properties will be created in the granting  
58 of the dimensional variance; (2) whether the benefit sought by the applicant can be achieved by  
59 some method, feasible for the applicant to pursue, other than a dimensional variance; (3) whether  
60 the requested dimensional variance is substantial; (4) whether the proposed variance will have a  
61 significant adverse impact on the physical conditions in the neighborhood; and (5) whether the  
62 alleged difficulty was self-created, which consideration shall be relevant to the decision of the  
63 permit granting authority, but shall not necessarily preclude the granting of the dimensional  
64 variance.

65         Except where local ordinances or by-laws shall expressly permit variances for use, no  
66 variance may authorize a use or activity not otherwise permitted in the district in which the land  
67 or structure is located; provided, however, that such variances properly granted prior to January  
68 first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms  
69 and conditions that were in effect for such variance upon said effective date. No variance may  
70 authorize a use or activity not otherwise permitted in the district in which the land or structure is  
71 located unless the permit granting authority specifically finds that owing to circumstances  
72 relating to the soil conditions, shape, or topography of such land or structures and especially  
73 affecting such land or structures but not affecting generally the zoning district in which it is  
74 located, a literal enforcement of the provisions of the ordinance or by-law would involve  
75 substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief

76 may be granted without substantial detriment to the public good and without nullifying or  
77 substantially derogating from the intent or purpose of such ordinance or by-law.

78 SECTION 8. Chapter 40A is hereby amended by inserting after the Section 7 the  
79 following section:-

80 Section 7A. Site Plan Review

81 (a) As used in this section, “site plan review” shall mean a separate review under a  
82 municipality’s zoning ordinance or by-law, by the planning board, of a plan showing the  
83 proposed on-site arrangement of, parking, pedestrian and vehicle circulation, utilities, grading  
84 and other site features and improvements existing or to be placed on a parcel of land, in  
85 connection with the proposed use of land or structures. Under site plan review, an applicant  
86 proposing the development or redevelopment of land for a use that is authorized by right under  
87 the local zoning ordinance or by-law presents a plan and other information relevant to the site  
88 design of the proposed development to the planning board, which may take input from municipal  
89 departments and parties in interest. Such review shall take place under this section only where  
90 the proposed use does not require a special permit or variance under the local by-law or  
91 ordinance.

92 (b) Cities and towns may require such site plan review under a local ordinance or by-law  
93 adopted prior to the effective date of this section, or thereafter under this section. Site plan  
94 review may be required before a building permit is granted for the construction, reconstruction,  
95 or expansion of structures for a use not requiring a special permit or variance, as well as before  
96 the commencement of site development not requiring a building or special permit. The planning  
97 board may adopt, and from time to time amend, rules and regulations to implement the local site

98 plan review ordinance or by-law, including provisions for the imposition of reasonable fees for  
99 the employment of outside consultants in the same manner as set forth in section 53G of chapter  
100 44.

101 (c) An ordinance or by-law requiring site plan review, whether adopted under this  
102 section or previously adopted under the municipality's home rule authority, shall comply with  
103 the provisions of this and all following subsections of Section 7A. The ordinance or by-law shall  
104 establish the submission, review, and approval process for applications, which may include the  
105 requirement of a public hearing held pursuant to the provisions of section eleven of this chapter.  
106 Approval of a site plan shall require a simple majority vote of the planning board and the  
107 planning board's written decision shall be filed with the city or town clerk within the time limits  
108 prescribed by the ordinance or by-law, not to exceed 90 days from the date of filing of the  
109 application. If no decision is filed within the time limit prescribed, the site plan shall be deemed  
110 constructively approved as provided in section 9, paragraph 11 of this chapter.

111 (d) The decision of the planning board may require only those conditions that the  
112 applicant has agreed to make or that otherwise are within the planning board's power under the  
113 applicable ordinance or by-law and is determined by the planning board to be necessary to  
114 ensure substantial compliance of the proposed improvements with the requirements of the zoning  
115 ordinance or by-law or to reasonably mitigate any extraordinary direct adverse impacts of the  
116 proposed improvements on adjacent properties. A site plan application may be denied only on  
117 the grounds that: (i) the proposed site plan cannot be conditioned to meet the requirements set  
118 forth in the zoning ordinance or by-law; (ii) the applicant failed to submit the information and  
119 fees required by the zoning ordinance or by-law necessary for an adequate and timely review of  
120 the design of the proposed land or structures; or (iii) there is no feasible site design change or

121 condition that would adequately mitigate any extraordinary direct adverse impacts of the  
122 proposed improvements on adjacent properties.

123 (e) Zoning ordinances or by-laws shall provide that a site plan approval granted under this  
124 section shall lapse within a specified period of time, not less than two years from the date the  
125 planning board files its decision with the city or town clerk, if substantial use or construction,  
126 including substantial investment in site preparation or infrastructure construction, has not yet  
127 begun. The aforesaid minimum period of two years may, by ordinance or by-law, be increased  
128 to a longer period. If an appeal is filed, the commencement of the lapse period shall be measured  
129 from the date of the dismissal of the appeal or entry of final judgment in favor of the applicant.  
130 The period for lapse may be extended for good cause by a majority vote of the planning board.

131 (f) Site plan review decisions may be appealed under Section 17 in the same manner as a  
132 special permit. A complaint by a plaintiff challenging a site plan approval under this section shall  
133 allege the specific reasons why the planning board exceeded its authority in approving the site  
134 plan and shall allege specific facts establishing how the plaintiff is aggrieved by such decision.  
135 The planning board's decision in such a case shall be affirmed unless the court concludes that the  
136 decision exceeded the planning board's authority under subsection (d).

137 (g) The submission and review process for a site plan submitted in connection with an  
138 application for a use that requires a special permit or use variance shall be in conjunction with  
139 the submission and review of such special permit or variance application in a coordinated  
140 process and shall not be subject to a separate site plan review hearing or process under this  
141 section or any local ordinance or by-law.



142 (h) In municipalities that adopted a zoning ordinance or by-law requiring some form of  
143 site plan review prior to the effective date of this act, the provisions of this Section 7A shall not  
144 be effective with respect to such zoning ordinance or by-law until one year after the effective  
145 date of this act.

146 SECTION 9. Chapter 40A of the General Laws, as so appearing, is hereby amended by  
147 inserting the following section:-

148 Section 18. Exactions. No decision under this chapter shall be based on the exaction of  
149 monetary payment or property from the applicant or landowner unless the decision contains  
150 explicit findings of fact and conclusions demonstrating that the exaction so required or requested  
151 satisfies federal constitutional requirements.

152 SECTION 10. Section 81Q of chapter 41, as so appearing, is hereby amended by  
153 inserting after the eleventh sentence the following sentence:-

154 No decision concerning a plan of a subdivision shall be based on the exaction of  
155 monetary payment or property from the applicant or landowner unless the decision of the  
156 planning board contains explicit findings of fact and conclusions demonstrating that the exaction  
157 so required or requested satisfies federal constitutional requirements.

158 SECTION 11. Section 40 of chapter 131, as so appearing, is hereby amended by striking  
159 out the eighteenth paragraph and inserting in place thereof the following paragraph:-

160 If after said hearing the conservation commission, selectmen or mayor, as the case may  
161 be, determine that the area on which the proposed work is to be done is significant to public or  
162 private water supply, to the groundwater supply, to flood control, to storm damage prevention, to

163 prevention of pollution, to protection of land containing shellfish, to the protection of wildlife  
164 habitat or to the protection of fisheries or to the protection of the riverfront area consistent with  
165 the following purposes: to protect the private or public water supply; to protect the ground water;  
166 to provide flood control; to prevent storm damage; to prevent pollution; to protect land  
167 containing shellfish; to protect wildlife habitat; and to protect the fisheries, such conservation  
168 commission, board of selectmen or mayor shall by written order within twenty-one days of such  
169 hearing impose such conditions as will contribute to the protection of the interests described  
170 herein, and all work shall be done in accordance therewith. No order shall be based on the  
171 exaction of monetary payment or property from the applicant or landowner unless the written  
172 order contains explicit findings of fact and conclusions demonstrating that the exaction so  
173 required or requested satisfies federal constitutional requirements. If the conservation  
174 commission, selectmen or mayor, as the case may be, make a determination that the proposed  
175 activity does not require the imposition of such conditions, the applicant shall be notified of such  
176 determination within twenty-one days after said hearing. Such order or notification shall be  
177 signed by the mayor or a majority of the conservation commission or board of selectmen, as the  
178 case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.

179 SECTION 12. The twelfth paragraph of Section 9 of chapter 40A, as so appearing, is  
180 hereby amended by deleting the words “a two-thirds vote of boards with more than five  
181 members, a vote of at least four members of a five member board, and a unanimous vote of a  
182 three member board” and inserting in place thereof the following words:-

183 the concurring vote of a majority of the members then in office.

184 SECTION 13. The fourth paragraph of Section 15 of chapter 40A, as so appearing, is  
185 hereby amended by deleting the words “all members of the board of appeals consisting of three  
186 members, and a concurring vote of four members of a board consisting of five members” and  
187 inserting in place thereof the following words:-

188 the concurring vote of a majority of the members of the board of appeals then in office.

189 SECTION 14. Section 53G of chapter 44, as so appearing, is hereby amended by  
190 inserting after the first sentence the following paragraph:

191 Such rules shall require that the city or town establish and update as necessary a list of  
192 approved outside consultants having the minimum qualifications in one or more fields in which  
193 the local permitting boards or commission reasonably expect to require outside consultants in  
194 reviewing applications. The list shall be certified by the city clerk or town clerk and shall  
195 contain not less than three outside consultants in each field. The applicant shall have the right to  
196 select the outside consultant(s) from the certified list and to request and receive a proposal from  
197 each consultant prior to making such selection. An applicant or petitioner shall not be charged  
198 with the travel costs of an outside consultant. Where a proposed project requires the review and  
199 approval of more than one local board, commission, or official, the respective local boards,  
200 commissions, and officials shall coordinate in their use of outside consultants in order to avoid  
201 unnecessary duplication.

202 SECTION 15. The second paragraph of Section 17 of chapter 40A, as so appearing, is  
203 hereby amended by striking out the first sentence and inserting in place thereof the following  
204 paragraphs:-

205           If the complaint is filed by someone other than the original applicant, appellant or  
206 petitioner, such original applicant, appellant, or petitioner and all members of the board of  
207 appeals or special permit granting authority shall be named as parties defendant with their  
208 addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff  
209 shall within fourteen days after the filing of the complaint, send written notice thereof, with a  
210 copy of the complaint, by delivery or certified mail to all defendants, including the members of  
211 the board of appeals or special permit granting authority and shall within twenty-one days after  
212 the entry of the complaint file with the clerk of the court an affidavit that such notice has been  
213 given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer  
214 shall be required but an answer may be filed and notice of such filing with a copy of the answer  
215 and an affidavit of such notice given to all parties as provided above within seven days after the  
216 filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the  
217 court shall give notice of the hearing as in other cases without jury, to all parties whether or not  
218 they have appeared.

219           The board of appeals or special permit granting authority shall transmit to the reviewing  
220 court the record of its proceedings, including its minutes, findings, decisions, and, if available, a  
221 true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of  
222 that tape recording is a true and correct transcript for purposes of establishing the record. The  
223 court may not accept or consider any evidence outside the record of the board of appeals or  
224 special permit granting authority unless that evidence was offered to the board of appeals or  
225 special permit granting authority, respectively, and the court determines that it was improperly  
226 excluded from the record.

227           The court shall examine the record upon which the decision of the board of appeals or  
228 special permit granting authority is based, and upon such record determine only whether or not  
229 the decision is arbitrary, capricious, or illegal. A decision of a board of appeals or special permit  
230 granting authority is valid if the decision is supported by substantial evidence in the record and is  
231 not arbitrary, capricious, or illegal.

232           The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of  
233 notice other than notice by publication, mailing or posting as required by this chapter, and the  
234 validity of any action shall not be questioned for matters relating to defects in procedure or of  
235 notice in any other proceedings except with respect to such publication, mailing or posting and  
236 then only by a proceeding commenced within ninety days after the decision has been filed in the  
237 office of the city or town clerk, but the parties shall have all rights of appeal and exception as in  
238 other equity cases.

239           SECTION 16. Section 8C of chapter 40, as so appearing, is hereby amended by inserting  
240 after the second paragraph the following paragraph:-

241           A Conservation Commission may administer and enforce a local wetlands ordinance or  
242 by-law that is adopted by a municipality, only to the extent that it imposes standards or other  
243 requirements that are more stringent than or otherwise exceed those set forth in Wetlands  
244 Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR 10.00) thereunder, and only if,  
245 prior to adoption by a municipality, the Department of Environmental Protection shall review  
246 and approve any such proposed local wetlands ordinance or by-law based upon findings that the  
247 proposed ordinance or by-law has a generally recognized scientific basis, is a recommended best  
248 practice technique, is necessary to protect unusual local resources that warrant special or

249 enhanced protection, and does not conflict with the Wetlands Protection Act (G.L. Ch. 131 § 40)  
250 and regulations (310 CMR 10.00) thereunder. An appeal of a decision made under a local  
251 wetlands ordinance or by-law shall be made to the Department of Environmental Protection in  
252 accordance with the Wetlands Protection Act (G.L. Ch. 131 § 40) and regulations (310 CMR  
253 10.00) thereunder.

254 SECTION 17. Section 13 of chapter 21A, as so appearing, is hereby amended by striking  
255 out the first paragraph and inserting in place thereof the following paragraph:-

256 A board of health may adopt a local on-site sewage disposal systems regulation, only to  
257 the extent that it imposes standards or other requirements that are more stringent than or  
258 otherwise exceed those set forth in Title 5 of the State Environmental Code, 310 CMR 15.000,  
259 and only if, prior to adoption by the board of health, the Department of Environmental Protection  
260 shall review and approve any such proposed on-site sewage disposal systems regulation based  
261 upon findings that the proposed regulation has a generally recognized scientific basis, is a  
262 recommended best practice technique, is necessary to protect unusual local resources that  
263 warrant special or enhanced protection, and does not conflict with Title 5 of the State  
264 Environmental Code, 310 CMR 15.000.

265 SECTION 18. The first paragraph of Section 31 of chapter 111, as so appearing, is  
266 hereby amended by inserting after the second sentence the following sentence:-

267 A board of health may adopt local on-site sewage disposal systems regulations that  
268 contain standards or other requirements that are more stringent than or otherwise exceed those  
269 set forth in Title 5 of the State Environmental Code, 310 CMR 15.000, only if, prior to adoption  
270 by the board of health, the Department of Environmental Protection shall review and approve

271 any such proposed on-site sewage disposal systems regulation based upon findings that the  
272 proposed regulation has a generally recognized scientific basis, is a recommended best practice  
273 technique, is necessary to protect unusual local resources that warrant special or enhanced  
274 protection, and does not conflict with Title 5 of the State Environmental Code, 310 CMR 15.000.