SENATE DOCKET, NO. 1434 FILED ON: 2/17/2021

SENATE . . . . . No. 158

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 to promote livable communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Marc R. Pacheco	*First Plymouth and Bristol*	
James B. Eldridge	*Middlesex and Worcester*	*5/7/2021*

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SENATE . . . . . No. 158

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 158) of Marc R. Pacheco for legislation to promote livable communities. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *95* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to promote livable communities.

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

SECTION 1. (a) the land and waters within the Commonwealth possess distinct natural, scientific, historical, scenic, cultural, architectural, archeological, recreational, economic, agricultural and other values;

(b) there is a national, regional, state, and local, interest in preserving and enhancing these values; and these values are being threatened and may be irreparably damaged by uncoordinated or inappropriate uses of the Commonwealth's land and resources.

(c) the obligation to protect the many valuable resources of the Commonwealth is shared by local, regional, state and national governments, civic organizations, businesses and the general public.

(d) these resources are being adversely affected by a lack of effective and coordinated planning among the various levels of government and a lack of adequate funding and technical assistance for municipalities.

(e) these resources can be protected if each level of government participates in sustainable planning for smart growth.

Section 2.(a) State principles and goals

(1) state policies and spending decisions should encourage growth in appropriate and identified places.

(2) state resources should be targeted to support development in areas where infrastructure is already in place.

(3) state polices and spending decisions should not encourage or subsidize sprawl.

(4) state policies and spending decisions should discourage growth in environmentally sensitive areas in order to protect the Commonwealth's most valuable remaining natural resources before they are lost.

(b) To that end it shall be the policy of the Commonwealth to :

(1) discourage wasteful use of land, water and energy resources;

(2) support revitalization and reinvestment in urban areas and older suburbs;

(3) encourage the reuse and rehabilitation of existing infrastructure rather than the construction of new infrastructure in undeveloped areas

(4) protect, to the maximum extent possible, environmentally sensitive lands, natural resources, wildlife habitats. and cultural, natural, and historic landscapes;

(5) support a range of convenient and affordable transportation choices;

(6) protect economically productive natural areas including farmland and forests;

(7) provide an adequate supply of affordable housing for all income levels throughout each community; particularly for households earning 50 per cent or less of the area median income, as defined by the federal Department of Housing and Urban Development.

(8) encourage a clear and transparent development approval process;

(9) encourage regional solutions and approaches to planning issues as appropriate, e.g., transportation, housing supply, and water supply;

(10) assist municipalities and regions in planning for growth;

(11) require coordination among state agencies so that sustainable development efforts by one agency are not undermined by other state decisions and policies;

(12) Encourage coordination and cooperation among levels of government; and

(13) Ensure that permitting, funding, and construction activities by state agencies do not enable, contribute to, or perpetuate development that is inconsistent with state, regional and local sustainable development plans.

Section 3. For purposes of this chapter, the following words shall have the following meanings:

"Agency" any agency, department, board, commission, authority, and instrumentality of the Commonwealth and any authority or any political subdivision which is responsible for siting, designing, funding, constructing or permitting of infrastructure projects, public facilities or private development or which is responsible for which is responsible for transportation, water supply, waste water treatment and disposal and solid waste management facilities or infrastructure.

"Secondary growth impacts", growth that occurs as a result of making infrastructure available.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, prosperous communities that include a sufficient amount of affordable housing while simultaneously maintaining and enhancing the environment, the natural resource base and the ongoing functioning of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

Section 4. (a) There shall be a council for a sustainable commonwealth, known in this chapter as the council, to be chaired by the governor or his designee. The council shall consist of the following voting members: the director of housing and community development or her designee, the secretary of environmental affairs or his designee, the secretary of transportation and construction or his designee, the secretary of administration and finance or his designee and the director of economic development or his designee. The council shall also include the following non-voting members, who shall serve in an advisory capacity: the chairman of the Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of

the Massachusetts historical commission or his designee, two chairs of regional planning agencies nominated by the governor, a municipal planning representative appointed by the governor and a professional planner appointed by the governor.

(b) the council for a sustainable commonwealth shall have the following primary responsibilities, to:

(1) consider, coordinate and, where appropriate, recommend modifications to the capital planning done by each state agency;

(2) resolve inconsistencies among and between each of the capital and operating plans of the agencies and regional sustainable development plans, and any inconsistencies that cannot be resolved through discussion and mediation shall be resolved by a majority vote of the voting members of the council;

(3) encourage the state agencies to consider secondary growth impacts in their capital planning and to encourage agencies to site facilities in areas where infrastructure already exists or to create infrastructure in developed areas, rather than in undeveloped areas; and

(4) determine and direct the appropriate agency or agencies to provide technical assistance, on an as needed basis, to municipalities as they seek to implement their plans.

(5) develop guidelines for an urban initiative program that will be part of each regional sustainable development plan.

Section 5. (a) By March 15 of every odd year, each agency shall develop a five-year agency sustainable development plan, known in this chapter as an agency plan that is consistent

with the state goals, principles and policies outlined in section 2 and that meets the following criteria:

(1) all agencies shall promote, assist and pursue the rehabilitation and revitalization of infrastructure, structures, sites, and areas previously developed and still suitable for economic reuse. Such rehabilitation and revitalization, where practicable, shall be deemed preferable over construction of new facilities or development of areas with significant value in terms of environmental quality and resources. However, all agencies shall recognize that a lack of low and moderate-income housing may necessitate new construction of affordable and mixed income housing in areas in which there is an imbalance between housing supply and demand.

(2) all agency plans, and all infrastructure spending under them, shall seek to minimize unnecessary loss or depletion of environmental quality and resources that might result from such activity.

(3) all agencies shall consider secondary growth impacts in the development of their agency plans.

(4) all agency plans and all infrastructure spending under them, shall consider any applicable regional sustainable development plans created under section 5 of chapter 40B as amended by this act, that are in effect on the date of publication of the agency plans, and conform to the regional plans, where feasible.

Section 6. (a) the executive office of environmental affairs, the department of economic development, the department of housing and community development, and the executive office of transportation and construction, when awarding discretionary grants to municipalities, excluding any grants made under chapter 90, shall give priority to municipalities that have

adopted certified local sustainable development plans pursuant to chapter 41, section 81D as amended by this Act.

(b) the executive office of environmental affairs, the department of economic development, the department of housing and community development, and the executive office of transportation and construction, when awarding grants that require a municipal match, shall reduce the match requirement by no less than 10% for municipalities that have adopted certified local sustainable development plans.

SECTION 2. Section 6 of chapter 132C of the General Laws shall be effective 3 years after the effective date of this act.

SECTION 3. Section 62A of chapter 30 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following paragraph:

The secretary of environmental affairs shall consider in his review of any project under this section the consistency of that project with chapter 132C and its consistency with plans created under section 81D of chapter 41 as amended by this act.

SECTION 4. The secretary, chairman or director of every agency subject to chapter 132C of the General Laws, within one year from the effective date of this act, and thereafter on an annual basis, shall report on the status and effectiveness of their compliance with said chapter 132C. The reports shall be submitted to the governor, the clerks of the house of representatives and the senate and the chairs of the joint committee on natural resources and agriculture, and shall be made available by each agency for public review.

SECTION 5. The governor shall, within three months of the effective date of this Act, issue a guidance document for use by agencies in preparing their annual reports under Section 4 of this act and shall, within six months following the submission of the agencies' reports and after consideration of any comments received on such reports, submit to the council for a sustainable commonwealth a summary report and recommendations for the continued implementation of chapter 132C of the General Laws.

SECTION 6 Chapter 40B of the General Laws, as so appearing, is hereby amended by striking out Section 5 and inserting in place thereof the following section:

Section 5. (a) For purposes of this section, the following words shall have the following meanings:

"Concentrated Development Center", an area composed of concentrated mixed use development established by a municipality or collection of municipalities in conjunction with the regional planning commission.

"Council", the council for a sustainable commonwealth created under chapter 132C.

"Regional planning commission", regional or district planning commissions established under this chapter.

"Regional sustainable development plan", a regional plan.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, economically vital communities that include a sufficient amount of affordable housing while simultaneously maintaining or enhancing the environment, the natural resource base and the ongoing functioning

of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

"Targeted Investment Area", an area of a municipality or collection of municipalities designated by a regional planning commission, based on municipal recommendations, which is consistent with resource-efficient development and which shall receive priority for public funds.

(b) (1) Each regional planning commission shall develop a regional sustainable development plan. This may include the revision or modification of a plan previously created under this chapter. Regional plans shall be revised or updated at least every 5 years. Regional plans shall contain the elements of a complete local sustainable development plan as provided in Chapter 41, Section 81D of the General Laws as amended by this Act. Each RPA shall adapt said elements to the regional plan. Regional plans also shall adhere to the policies of the commonwealth established by section 2 of chapter 132C.

(2) Regional plans shall consider all local sustainable development plans, created under section 81D of chapter 41 as amended by this Act, of municipalities within the planning region, which are in effect at the time the regional plan is being developed by the regional planning commission. If any local plans within a region's planning district are inconsistent with one another, the regional planning commission shall encourage the conflicting municipalities to create consistent plans and make recommendations for bringing the plans into compliance with one another.

(c) (1) The regional planning commissions may collectively establish uniform procedures under this section.

(2) In developing regional plans, the regional planning commissions shall each employ an open, inclusive and broadly participatory process. The regional planning commissions shall undertake public notification and participation procedures that are designed to seek widespread public participation in the regional planning process, including, but not limited to input from the following: local planning boards and other officials and residents of each municipality within the planning district; business and industry representatives; environmental and public health groups; housing advocates and providers, advocates for the local watershed area or areas; representatives of conservation commissions; officials and/or residents of a neighboring planning region with an interest, and representatives of the commonwealth's agencies and departments who have infrastructure or investments in the planning district.

(3) The executive committee of each regional planning commission shall review its regional plan for compliance with this section and internal consistency before forwarding it to its commission members for approval. If a regional plan is approved by a simple majority vote of the regional planning commission's members, the plan shall be considered approved and there shall be a rebuttable presumption that the plan is fully compliant with this section and internally consistent. Once the regional plan is approved by a majority vote of the commission members, the regional planning commission shall forward it to the council for sustainable commonwealth, created under chapter 132C, to enable the commonwealth's agencies to develop capital spending plans that are consistent with the regional plans.

(d) The regional planning commissions shall review all local sustainable development plans in their jurisdictions under subsection (d) of section 81D of chapter 41 as amended by this Act.

(e) The council shall develop minimum guidelines for regional urban initiative programs. Each regional plan shall include an urban initiative planning component. Each regional planning agency shall have the opportunity to expand and shape the urban initiative program to meet the needs of its region.

(1) A fundamental element of the urban initiative program shall include identification and designation of Targeted Investment Areas, based on municipal recommendations. Examples include: infill development in areas with infrastructure capacity; re-development of brownfield sites; and adaptive reuse of structures.

(2) The urban initiative program shall also require regional planning commissions to work with their municipal jurisdictions to develop criteria for and identify and designate Concentrated Development Centers. Such areas may vary in size and complexity depending on the degree of urbanization in the region or the area proposing designation. Concentrated Development Centers may be designated in the urban economic core, in urban growth areas, in subregional areas, and in suburban and rural centers.

(f) The regional planning commissions shall develop initial regional sustainable development plans under section 5 of chapter 40B of the General Laws no later than 18 months after the effective date of this act. Under no circumstances shall the failure of a regional planning commission to initiate or complete a regional plan prevent a municipality from developing a local sustainable development plan under section 81D of chapter 41of the General Laws as amended by this Act.

(g) Regional planning commissions shall be responsible for developing a process to review major developments affecting more than one community. Regional planning

commissions will establish a definition for major developments and procedures for comment and review. The Planning Board of any municipality within a region can request that the regional planning commission hold a public hearing on a major development. Any comments or recommendations that result from the review will be shared with the Massachusetts Environmental Policy Act (MEPA) office, if the project requires MEPA review, or with the appropriate decisionmaking and permitting authorities.

SECTION 7. Chapter 41 of the General Laws, as so appearing, is hereby amended by striking out section 81D and inserting in place thereof the following section:

Section 81D

For purposes of this section, the following words shall have the following meanings:

"Council", the council for a sustainable commonwealth created under chapter 132C.

"Land use regulations", regulations, administered in whole or in part by a municipality, which materially affect the purposes of this section, including but not limited to: zoning, subdivisions, wetlands, public health and transportation.

"Local sustainable development plan", a local plan.

"Regional planning commissions", organizations established under chapter 40B.

"Regional sustainable development plans " or "regional plans", plans developed under section 5 of chapter 40B.

"Sustainable", purposefully designed to bring about efficient, safe, healthy, economically vital communities that include a sufficient amount of affordable housing, while simultaneously

maintaining and enhancing the environment, the natural resource base and the ongoing functioning of natural ecosystems that are fundamental to sustaining life and prosperity for current as well as future generations.

(b) (1) A planning board, established in a municipality under section 81A, shall develop, in consultation with other elected and appointed municipal boards, a local sustainable development plan of the municipality and, may, from time to time, extend or perfect such plan. The local plan may be the revision or modification of a plan previously created pursuant to section 81D. The local plan shall be revised or updated at least every 5 years.

(2) The local sustainable development plan shall be a plan that is designed to provide a basis for decision-making regarding the long-term sustainable development of the municipality. The local plans shall adhere to policies identified in section 2 of chapter 132C.

(3) The local plan may include text, maps, illustrations or other forms of communication. The local plan shall include the following elements:

(i) A goals and policies statement which identifies the goals and policies of the municipality to protect its natural resources and to provide for its sustainable growth and development. Each community shall conduct an interactive process as described in subsection (4) to determine municipal priorities and goals, to determine the best way to make development in the municipality sustainable and to identify patterns of development that will be consistent with these goals.

(ii) Land use plan element illustrating present land uses and designating the proposed distribution, location, and inter-relationship of public and private land uses. This element shall relate population density and building intensity to the capacity of land available and to planned

facilities and services. A land use plan map illustrating the land use policies of the municipality shall be included.

(iii) Natural and cultural resources element which provides an inventory of the significant natural, cultural, and historic resource areas of the municipality and policies and strategies for the protection and management of such areas. This element shall also include any strategies for protecting community character.

(iv) Watershed protection element which identifies ground and surface water resources contained in whole or in part within a municipality, future needs, and threats, including the impact of development on water supply, water quality, river and stream flow and wildlife habitat.

(v) Housing element which identifies and analyzes existing and forecasted housing needs and objectives including programs for the preservation, improvement and development of housing, particularly housing that is affordable to residents of the municipality who are low and moderate income as defined by the federal Department of Housing and Urban Development. This element shall identify policies and strategies to provide a range of local affordable housing opportunities and strategies to rezone areas to allow the development of multi-family housing.

(vi) Economic development element which identifies policies and strategies for the expansion or stabilization of the local economic base and the promotion of employment opportunities.

(vii) Open space and recreation element which provides an inventory of recreational resources and open space areas of the municipality, and policies and strategies for the management and protection of such resources and areas.

(viii) Services and facilities element which identifies and analyzes existing and forecasted needs for facilities and services used by the public, including, but not limited to facilities for: education, public safety, water and sewer services, energy demands and energy conservation, and other utilities.

(ix) Transportation element which identifies existing and proposed intermodal transportation systems including roads, mass transit, pedestrian, bicycle, and waterways, as well as the impacts of such systems on land uses within the municipality.

(x) Implementation program element which defines and schedules the specific municipal actions, including the identification of the anticipated costs and revenues, associated with each element of the plan. Scheduled expansion or replacement of public facilities or circulation system components and the anticipated costs and revenues associated with accomplishments of such activities shall be detailed in this element. This element shall specify the process by which the municipality's regulatory structure shall be amended so as to be consistent with the plan.

(xi) Bylaw or ordinance element that shall outline appropriate land use regulations consistent with the Plan and reasonably necessary to implement the elements of the Plan.

(4) In developing local plans, the municipalities shall each employ an open, inclusive and broadly participatory process. The municipalities shall undertake public notification and participation procedures that are designed to seek widespread public participation in the local planning process, including but not limited to input from the following: local officials and residents of the municipality, neighborhood representatives, business and industry representatives in the community, environmental and public health groups, housing advocates

and providers, advocates for the local watershed area or areas; conservation commissions; the appropriate regional planning commission, representatives of neighboring municipalities and representatives of the commonwealth's agencies and departments that have infrastructure or investments in the municipality.

(5) To the extent that one or more of the elements of the plan is already addressed in another plan, such as an open space and recreation plan, such plan(s) may be included as a component of the local plan in order to satisfy that particular element of the Plan.

(6) A municipality which has an established local sustainable development plan and applies for a state grant from the commonwealth shall prepare and keep on file within the municipality an economic development supplement; but the municipality shall not be required to prepare the supplement if the municipality has a supplement on file. The supplement shall be at least one page in length and shall contain the goals of the municipality with respect to industrial or commercial development, affordable housing, and preservation of parks and open space.

(7) All local sustainable development plans shall be internally consistent in their policies, forecasts and standards, shall be consistent with the applicable regional sustainable development plan and shall consider the local sustainable development plans of neighboring municipalities.

(8) A local plan shall not be in effect until the plan has been reviewed by the applicable regional planning commission in accordance with subsection (c) and the plan has received local approval in accordance with subsection (d).

(c) A municipality shall present its completed plan to the applicable regional planning commission for review. The regional planning commission shall, within 60 days of receipt of the

plan, prepare and submit to the municipality a written review of the plan that shall certify whether the plan satisfies all the goals and elements required by subsection (b), whether it is both internally consistent and consistent with the applicable regional sustainable development plan, and whether it has given consideration to the local sustainable development plans of neighboring municipalities. The review shall identify any deficiency or omission with respect to each required element and goal described in subsection (b). The review shall include, where appropriate, recommendations as to how any omissions or deficiencies may be rectified. Upon receipt of the regional planning commission's certification indicating satisfactory compliance with this section, the planning board shall file the local plan with the office of the clerk of the municipality.

(d) Upon receiving certification from the applicable regional planning commission, the planning board shall present the local plan to the municipality's legislative body for approval with an outline of changes needed in the municipalities zoning ordinances, land use regulations or other municipal law to make the plan effective. Any additions to, modifications of, or amendments to the local plan must be presented to and approved by the local legislative body in the same manner. The local plan or local plan modifications shall, upon approval so described, be made part of the public record and a copy of the plan or plan modifications shall be submitted to the department of housing and community development and the executive office of environmental affairs. The plan and any modifications to the plan shall be filed with the office of the clerk of the municipality and made available to the public.

(e) Municipalities shall have five years to make substantial progress towards implementation of their plans. If after five years from the date of certification, the applicable regional planning commission deems that little or no progress has been made towards

implementation of the plan through changes in bylaws or ordinances, the plan will be decertified and the regional planning commission shall notify the council of the decertification.

SECTION 8 (a) There is hereby established and set up on the books of the commonwealth a Sustainable Development Grant Fund, into which shall be credited monies contributed by the commonwealth including any appropriations or other monies authorized by the general court and specifically designated to be credited to said fund. The fund shall be administered by the council. Amounts credited to said fund shall be provided as grants to municipalities and regional planning commissions for activities relating to the development and preparation of local and regional sustainable development plans under this Act.

(b) The council shall adopt regulations establishing the grant program created under this section of the act including, but not limited to: the factors to be used by the Council in determining the amount of the grant funds that will be awarded to each municipality; an application process for municipalities that choose to apply for grant funds; and provisions governing the funding of regional planning commissions in the conducting of their responsibilities under this Act.

(c) Factors to be used by the council in determining the amount of grant funds to be provided to each municipality shall include, but not be limited to: complexity of the planning issues confronting each municipality, the planning capacity of the municipality, and the capacity of each municipality to fund the planning process. Regulations shall also create an incentive program for multi-municipal planning.

(d) Provided further that chapters 236 and 246 of the acts and resolves of 2018 be amended to authorize and direct the secretary of environmental affairs and the secretary of

transportation to appropriate existing funds not to exceed $35,000,000 for the purposes outlined in this act. Of this amount, $5,500,000 will be for one time grants to be made to the regional planning commissions established under chapter 40B of the General Laws to facilitate compliance with section 5 of said chapter 40B as amended by this act, in accordance with the following formula: base funding of $100,000 per year per regional planning commission, plus 70 cents per capita based upon the most recent U.S. Census data on population.