SENATE . . . . No. 599

The Commonwealth of Massachusetts

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PRESENTED BY:

Cynthia Stone Creem

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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 incentivize the adoption of local climate resilience policies.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cynthia Stone Creem	*Norfolk and Middlesex*	
Marc R. Pacheco	*Third Bristol and Plymouth*	*4/12/2023*
Jack Patrick Lewis	*7th Middlesex*	*5/3/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*7/6/2023*

SENATE . . . . No. 599

By Ms. Creem, a petition (accompanied by bill, Senate, No. 599) of Cynthia Stone Creem for legislation to incentivize the adoption of local climate resilience policies. Financial Services.

The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Third General Court
(2023-2024)

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An Act to incentivize the adoption of local climate resilience policies.

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

1   Chapter 21N of the General Laws, as appearing in the 2020 Official Edition, is hereby

2   amended by inserting the following new section:-

3   Section 12. (a) As used in this section, the following word shall have the following

4   meanings:

5   "Program", the municipal vulnerability preparedness plus grant program, or MVP plus

6   program, established in this section.

7   (b) The secretary shall develop and support a municipal vulnerability preparedness plus

8   grant program, to be known as the MVP plus program. Municipalities that are certified as MVP

9   plus communities shall annually receive a share of the funds deposited into the Municipal

10   Vulnerability Preparedness Trust Fund. Municipalities shall use their share of the funds for

11   climate resilience projects approved by the executive office or to hire personnel who implement

12   and manage climate resilience and sustainability projects; provided, that the project approval

13   process shall be designed to minimize burdens on municipalities and that projects not approved

14   or denied within 30 days shall be deemed approved; provided further, that municipalities may

15   use funds for regional projects or for personnel shared with one or more other municipalities; and

16   provided further, that municipalities may use funds to contract with regional planning agencies

17   or nonprofit watershed associations for the management of regional projects.

18   The executive office shall establish a formula for the disbursement of funds from the

19   Municipal Vulnerability Preparedness Trust Fund to MVP plus-certified communities. Variables

20   and weighted proportions of the formula shall include, but not be limited to: (i) the road mileage

21   within the municipality; (ii) the total population of the municipality; (iii) the total number of

22   employed individuals within the borders of the municipality; (iv) the number of environmental

23   justice criteria the municipality meets; and (v) the proportion of the municipality that lies within

24   an area that is designated as a special flood hazard area by the Federal Emergency Management

25   Agency, or the proportion of the municipality that is vulnerable to flooding according to a

26   different measure selected by the secretary that is at least as inclusive as the special flood hazard

27   area designation.

28   (c) Municipalities seeking designation as an MVP plus community shall file an

29   application in a form and manner to be prescribed by secretary. To qualify as a MVP plus

30   community, a municipality shall: (1) complete the community-led resilience building process and

31   vulnerability assessment described in section 11 of this chapter; (2) adopt the specialized stretch

32   resilience code; and (3) adopt at least 4 of the following 6 policies and programs:

33   (i) a stormwater utility program to fund upgrades to stormwater infrastructure and other

34   projects that mitigate flooding and protect natural bodies of water;

35   (ii) a program establishing climate resilience hubs, located in buildings such as schools,

36   libraries, and community centers, to educate residents about extreme weather preparedness and

37   the impacts of climate change and to provide shelter and assistance during weather-related

38   emergencies;

39   (iii) a policy for the use of green infrastructure in appropriate public works and public

40   infrastructure projects and a requirement that municipal employees who participate in the

41   planning and design of public works and public infrastructure projects participate in a green

42   infrastructure training program approved or designed by the secretary that includes at least 35

43   hours of training on subjects including nature-based stormwater management practices and

44   nature-based climate resilience strategies; provided, that members of local planning boards,

45   conservation commissions, or other public bodies that participate in the planning and design of

46   public works and public infrastructure projects but who are not full-time municipal employees

47   may participate in an abbreviated green infrastructure training program approved or designed by

48   the secretary that includes 5 hours of such training;

49   (iv) a floodplain overlay district that covers special flood hazard areas designated by the

50   Federal Emergency Management Agency and other areas designated by the municipality that are

51   projected to become vulnerable to flooding due to climate change and that imposes restrictions

52   on construction, significant renovation, dumping, and filling that are designed to protect human

53   life and property from the hazards of periodic flooding, preserve the natural flood control

54   characteristics and the flood storage capacity of the floodplain, and preserve and maintain the

55   groundwater table and water recharge areas within the floodplain;

56   (v) a tree ordinance or by-law that (A) requires the planting of trees to provide adequate

57   shade to large paved areas such as parking lots; and (B) designates trees with a diameter at breast

58   height of 8 or more inches as protected trees and prohibits the removal of protected trees under

59   circumstances designated by the ordinance or by-law, unless the applicant plants native

60   replacement trees or makes a contribution to a municipal tree preservation fund that is used to

61   plant and care for trees; provided, that the ordinance or by-law shall require an applicant who

62   plants native replacement trees to consult the municipal tree warden about which species of tree

63   are suitable for planting and which locations are optimal for planting; and

64   (vi) an ordinance that, whenever permits require an analysis involving precipitation,

65   requires the use of National Oceanic and Atmospheric Administration Atlas 14 precipitation

66   estimates or the best available forward-looking precipitation estimates, as determined by the

67   secretary.

68   (d) The executive office shall be responsible for the administration and oversight of the

69   MVP plus program, including by: (1) adopting rules, regulations and guidelines for the

70   administration and enforcement of this section, including, but not limited to, establishing

71   application forms and procedures; (2) developing and disseminating model ordinances and by-

72   laws that meet the requirements described in subsection (c) and making them available to public

73   on the executive office's website; and (3) submitting an annual report by September 1 to the

74   clerks of the senate and the house of representatives detailing the municipalities participating in

75   the program, the expenditures of the program, and the projects supported by the program.

76   SECTION 2. Chapter 29 of the General Laws, as amended by section 13 of chapter 358

77   of the acts of 2020, is hereby amended by inserting the following section:-

Section 2PPPPPP. (a) There shall be established and set upon the books of the commonwealth a separate fund to be known as the Municipal Vulnerability Preparedness Trust Fund. The secretary of energy and environmental affairs shall administer the fund. Notwithstanding any general or special law to the contrary, there shall be credited to the fund any revenue subject to appropriations or other money authorized by the general court and specifically designated to be credited to the fund and any gifts, grants, private contributions, investment income earned by the fund's assets and any designated funds from other sources. No expenditures from the fund shall cause the fund to be in deficiency at the close of the fiscal year. All available monies in the trust fund that are unexpended at the end of each fiscal year shall not revert to the General Fund, shall be available for expenditure in the subsequent fiscal year, and shall not be subject to section 5C; provided, that at least 50 percent of the funds deposited into the fund each fiscal year shall be disbursed according to the formula established pursuant to subsection (b) of section 12 of chapter 21N and remaining funds may be used for the grant program established in section 11 of chapter 21N.

Section 2 of chapter 21A of the General Laws, as so appearing, is hereby amended by inserting after clause (30) the following clause:

(31) develop and promulgate, in consultation with the executive office of housing and economic development and the board of building regulations and standards, as an appendix to the state building code and to the state residential code, a municipal opt-in specialized stretch resilience code that incorporates forward-looking data on climate risks including, but not limited to, inland and coastal flooding, extreme temperatures, wind, and changes in precipitation patterns and that is more stringent than the most recent edition of the international building code and international residential code. The code shall include, at a minimum, the following provisions

101   that go beyond those in the most recent edition of the state building code: (i) requirements as to

102   freeboard and elevation above base flood elevation based on forward-looking climate data and

103   future flood risks; (ii) requirements as to the location of utilities and other critical infrastructure

104   within a structure; (iii) requirements as to wet and dry flood proofing of a structure; (iv)

105   requirements as to habitable space and uses of a structure; (v) requirements as to points of

106   ingress and egress; (vi) requirements as to ability to withstand extreme winds; and (vii)

107   requirements as to ability to withstand extreme temperatures. The code shall also include any

108   further language that is required to adequately prepare construction for future climate impacts

109   including from wind, extreme temperature, and flooding.

110   SECTION 4. The secretary of the executive office of energy and environmental affairs

111   shall form and consult with an advisory committee in the development of the municipal opt-in

112   specialized stretch resilience code. The advisory committee shall consist of at least 17 members

113   who shall include: the secretary of energy and environmental affairs or a designee, the chair of

114   the board of building regulations and standards or a designee, the secretary of the executive

115   office of housing and economic development or a designee, the commissioner of public health or

116   a designee, the director of the Massachusetts emergency management agency or a designee, the

117   director of the office of coastal zone management or a designee, 1 representative from an

118   organization that represents or serves an environmental justice community, 1 representative from

119   an affordable housing organization, 1 representative from a regional planning organization, 1

120   member with professional expertise in climate science and data, 1 member who is a professional

121   planner with experience in climate adaptation and resilience, 1 member who is a certified

122   building inspector in a city or town, 1 member who is a municipal planner, 1 member who is a

123   certified civil engineer, 1 member who is a certified coastal engineer, 1 representative from the

124   insurance industry, and 1 representative from the real estate development industry. The advisory

125   committee shall be formed within 3 months of the effective date of this act and shall produce

126   recommendations on requirements for the code within 12 months of the effective date of this act.

127   The stretch resilience code shall be promulgated not later than 18 after the effective date of this

128   act. The secretary shall, in consultation with the board of building regulations and standards,

129   review and update the stretch resilience code every three years.

130   SECTION 5. Section 96 of chapter 143, as so appearing, is hereby amended by striking

131   the second paragraph and inserting in place thereof the following:-

132   For the purposes of this section, "specialized codes" shall include, but not be limited to,

133   the specialized stretch energy code developed and promulgated by the department of energy

134   resources, the specialized stretch resilience code developed and promulgated by the secretary of

135   energy and environmental affairs, the state plumbing code, electrical code, architectural barriers

136   regulations, fire safety code, fire prevention regulations, sheet metal regulations and elevator

137   regulations.

138   SECTION 6. Section 100 of said chapter 143, as so appearing, is hereby amended by

139   striking the second paragraph and inserting in place thereof the following:-

140   Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act

141   by any state or local agency or any person or state or local agency charged with the

142   administration or enforcement of the state building code or any of its rules and regulations,

143   except any specialized codes as described in section 96, other than the specialized stretch energy

144   code developed and promulgated by the department of energy resources and the specialized

145   stretch resilience code developed and promulgated by the secretary of energy and environmental

146   affairs, may within forty-five days after the service of notice thereof appeal from such

147   interpretation, order, requirement, direction, or failure to act to the appeals board. Appeals

148   hereunder shall be on forms provided by the appeals board and shall be accompanied by such fee

149   as said appeals board may determine.