

Massachusetts House of Representatives Bill Summary

Bill #: H.2331

Title: An Act Allowing Municipalities to Reasonably Regulate Solar Siting

Sponsor: Rep. Aaron Saunders

Committee: Municipalities and Regional Government

Hearing Date: July 22, 2025

Prior History: H.4331 (2021-2022) discharged to Telecommunications, Utilities and Energy because an identical bill S.2596 had been referred to that committee.

Current Law: Chapter 40 Section 32 requires proposed zoning by-laws to be submitted to the Attorney General for review.

The ninth paragraph of Chapter 40A Section 3 of MGL holds that “No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.”

Chapter 40A Section 9B states that municipalities may adopt zoning ordinances or by-laws that encourage the use of solar systems and protect solar access by regulating criteria and elements that affect solar access, such as building height, set back requirements, vegetation, etc. Special permits may be used to protect access to sunlight and even create easements over neighboring property to allow adequate sunlight.

Current law added by Chapter 367 of the Acts of 1985, which included the definitions of solar access and solar energy systems and added Section 9B of Chapter 40A to encourage solar access.

Summary: The bill amends the ninth paragraph by adding language allowing municipalities to reasonably regulate the siting and installation of commercial, governmental, and non-residential solar energy structures and systems.

The legislation lists the criteria that municipalities may use when regulating such solar facilities:

1. Protecting the public health, safety and welfare;
2. Preserving forests, agricultural land or wetlands; and
3. Ensuring compatibility with municipal zoning laws.

Notes: In *Tracer Lane II Realty, LLC v. City of Waltham*, Case No. SJC-13195 (June 2, 2022), the Massachusetts Supreme Judicial Court affirmed the

Land Court's ruling that City officials violated state law when they determined that a road located on residentially zoned land could not be used to access a one-megawatt solar project on commercially zoned land.

The Court held that the municipality's prohibition on the use of the access road to serve the solar project violated section 3 of the Massachusetts Zoning Act, which provides that local zoning ordinances and decisions cannot "prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare." Mass. Gen. Laws ch. 40A, § 3. In so ruling, the Court held that where Section 3 of the Zoning Act applies to "solar energy systems" and "structures that facilitate the collection of solar energy," "we conclude that the access road is part of the solar energy system... [given] the access road's importance to the primary solar energy collection system...[in] facilitat[ing] the primary system's construction, maintenance, and connection to the electrical grid...." (bdlaw.com, July 6, 2022)

Courts have also ruled in previous cases that zoning restrictions must bear a substantial relation to public health, safety, morals, or general welfare (*Nectow v. City of Cambridge*, U.S. Mass. 1928, 48 S.Ct. 447, 277 U.S. 183, 72 L.Ed. 842).

In another case, the court stated that the test of validity is whether its provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. See *Connors v. Town of Burlington* (1950) 91 N.E.2d 212, 325 Mass. 494; *Foster v. Mayor of City of Beverly* (1944) 53 N.E.2d 693, 315 Mass. 567.

Several other cases use similar language in addressing the issue of validity as it relates to the preservation of health, safety, and welfare. If a municipality can demonstrate that its zoning regulations are furthering the general objectives of the zoning act, are consistent and not arbitrary or an unreasonable exercise of its police power, then the court will usually uphold the local zoning regulation.

If, however, there is no substantial relation to public safety, public health or public welfare but would amount to an arbitrary, unreasonable, and oppressive deprivation of the owner's interests in his property, such an application of a zoning amendment cannot be permitted. (*Gem Properties, Inc. v. Board of Appeals of Milton* (1960) 167 N.E.2d 315, 341 Mass. 99.)