BERKSHIRE REGIONAL PLANNING COMMISSION
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September 25, 2017

The Honorable Julian Cyr
Senate Co-Chair
Joint Committee on Community Development and Small Business
State House, Room 218
Boston, MA 02133

The Honorable Edward F. Coppinger
House Co-Chair
Joint Committee on Community Development and Small Business
State House, Room 26
Boston, MA 02133

RE: S.81 – An Act Promoting Housing and Sustainable Development

Dear Senator Cyr and Representative Coppinger:

The Berkshire Regional Planning Commission, which serves the thirty-two cities and towns in Berkshire County, wishes to indicate its overall support for the passage of S.81., sponsored by Senator Chandler, but desire that it be modified to conform more closely with H.2420 which has been heard by the Joint Committee on Municipalities and Regional Government. We hope that the Joint Committee on Community Development and Small Business will report the bill out favorably, with some modifications.

The Commonwealth's land use laws are some of the oldest and outdated land use laws in the U.S. They discourage smart growth and deprive cities and towns of modern zoning and planning tools to address twenty-first century challenges. The proposed bill will finally modernize the zoning, planning and subdivision laws of the Commonwealth. Comprehensive land use reform legislation has been introduced and discussed by the legislature for over a decade, without action.

An overall comment is that absent significant state funding to municipalities to update their zoning and subdivision bylaws and regulations, this bill is an unfunded state mandate. Most Berkshire communities do not have the financial resources and no planning staff to implement the zoning modifications required under the bill.

Our comments on major sections of the bill are:

Certification Program for Municipalities

As we have commented consistently on prior comprehensive land use reform legislation, BRPC has considerable concern with any municipal land use planning and zoning certification program which rewards communities which adopt certain measures and places those who do not at a disadvantage for competitive grants. Absent significant state funding we must oppose this provision as affluent communities will receive this benefit and economically disadvantage communities, such as most in the Berkshires, will be penalized. Many of our member communities simply do not have the staff resources, volunteer expertise or financial means to comply with the certification requirements. They will need significant state funding to reasonably consider these measures and then to adopt them if they so choose.

Accessory Dwelling Unit Requirement

We support the requirement that accessory dwelling units must be permitted within single family dwellings, with appropriate regulations, without requiring a special permit. We believe that allowing a community to require that at least one of the units in the dwelling be owner-occupied, set an overall limit on the percentage of such units, be exempted if there already are at least 5% multi-family units in the community, or if housing sale prices have declined in the community are important safeguards.

Multi-Family and Open Space Residential Development Requirement

While generally we support the requirement that multi-family residential use by right should be required in some portion of most communities, we believe some modifications to this section are warranted. The language should explicitly allow "by-right, subject to site plan review." This will allow communities to set reasonable site requirements while not allowing them to prohibit multi-family development. We believe that requiring every rural town to apply to DHCD for a waiver when they neither currently have nor will have water and sewer in a reasonable future nor any areas even remotely suitable for 40R status is an unwarranted burden on very small towns with no staff. It would be more productive to simply set an exclusion for towns with year-round populations of 250 people per square mile or less and with no existing or planned water and sewer.

While we support the concept that Open Space Residential Development must be allowed by right, it is very questionable how this will be implemented in most Berkshire communities due to their lack of planning resources. We also feel that this makes it more critical to modernize the Subdivision Control Law which creates a set of barriers to more flexible development practices.

Majority and Supermajority Voting on Zoning Matters

The issue of allowing each community to make its own decisions regarding whether zoning adoption and amendments, special permits, and variances are by super-majority or simple majority votes comes up in various sections of the bill. We support allowing the community to decide. We believe changing the current super-majority to simple majority by supermajority vote of the legislative body is appropriate. We believe that changing the existing supermajority vote on special permits to simple majority should require a legislative body vote rather than require a vote to retain the supermajority requirement. We think that the requirement that any zoning change subject to a landowner protest must be by supermajority, regardless of the standard requirement set by the community, such as simple majority voting, is fraught with pitfalls and should be dropped.

Provision for Different Voting Majority if Accessory Dwelling, Multi-Family, or OSRD Bylaw Proposals Fail
The bill indicates that if a legislative vote to approve any of the required Accessory Dwelling, Multi-Family or OSRD Bylaw proposals fails to gain the required super-majority, they may be subsequently approved by a simple majority. This will be very confusing to communities, especially those that use town meetings. For instance, who has the authority to require that the subsequent simple majority vote rule applies? It would be more straightforward to either remove this language in its entirety or, failing that, to simply state that the initial votes to adopt these provisions are by simple majority.

Vesting and Grandfathering Provisions
We support many of the provisions which clarify and clean-up the language on when proposed projects are vested and the grandfathering provisions. However, we believe that the provisions contained in H.2420 (Representatives Kulik and Peake) are much preferable to those in S.81. We especially support the changes which clarify that only the actual project proposed through an ANR plan is protected, and that the simple filing of an ANR plan does not freeze all aspects of the existing zoning. We believe that clarity needs to be added regarding the status of applications which are submitted and processed after publication of notice of a potential zoning change but before a vote of the legislative body has occurred. We do not believe they should be protected from the possible zoning change since this could lead to filing of applications quickly to avoid new requirements, but what happens if they attempt to meet new requirements which then do not get adopted? Especially given the length of time that a zoning amendment takes to be approved from public notice to final legislative vote, this could be a considerable delay for the project proponent. We suggest that a reasonable approach may be to provide a reasonably limited amount of time for the zoning amendment to receive legislative consideration or otherwise the proposed project proceeds under the zoning in existence when the permit was applied for.

Site Plan Review Authority
While we support the explicit provision for site plan review, this tool has received legal blessing from the Massachusetts' courts. We believe some of the language is problematic, such as conditions placed on a site plan are limited to impacts on properties within 300 feet. While 300 feet is an adequate distance for many issues dealt with in site plan review, lighting and noise, specifically, can create impacts much greater than 300 feet and can be very site specific due to topography, vegetation and other screening, height and types of lights, and atmospheric conditions for noise. No fixed distance limitation can adequately accommodate these variations.

Development Impact Fees and Inclusionary Zoning
We support the authorization for Impact Fees and Inclusionary Zoning.

Land Use Dispute Avoidance Process
The bill prohibits a bylaw or ordinance from not allowing a developer of a 40B permit to request use of a land use dispute avoidance process. This may be an unnecessary carry-over from previous versions of this legislation since there is no land use dispute avoidance process in the current bill.

Standards for Granting Variances
We support loosening the standards for permitting variances and prefer the language used in S.81 over that used in H.2420.

Surety or Cash Bond Requirements for Appeals

We are concerned that this possible requirement for surety or cash bonds if a judicial appeal is filed will put Environmental Justice communities at a disadvantage. A $15,000 cash bond may be well beyond the means of neighbors in a low-income community but will not be a deterrent at all in a wealthy neighborhood.

Smart Growth Zoning or Starter Home Zoning Districts

We support the provision in H.2420, which is absent in S.81, that smart growth or starter home zoning districts can be adopted by simple majority vote.

Master Plans (Chapter 41, s.81D)

We believe the wholesale changes in the language for master plans will lead to fewer communities even trying to develop these important documents. The requirements laid out both for the mandatory and voluntary elements are intimidating and overly proscriptive. We believe that the first 3 sections add good guidance and intent statements. There should be a general statement that planning boards should consult with other appropriate local officials, boards and commissions in developing master plans, rather than scattered limited references (agricultural commissions and boards of health).

Natural Resources & Energy Element

While both of these are important for master plans to cover and the addition of consideration of energy in master plans is a useful addition to the enabling legislation, we believe they should be dealt with separately. Natural Resources, Open Space and Recreation should be one element with allowance that an Open Space and Recreation Plan should be considered as equivalent. Energy and Climate Change should be a totally separate element as it should encompass a wide variety of issues, well beyond land use and natural resources and should encompass mitigation, adaptation and vulnerability assessment.

Mandatory versus Voluntary Elements

We believe the transportation element should be mandatory. We do not believe that there should be a separate possible Open Space and Recreation element but this should be covered under the Natural Resources element discussed above.

Other Comments on Specific Master Plan Elements

The Cultural Resources Element should be “Cultural Resources & Historic Preservation Element.” While the two might be synonymous, they are not necessarily so but typically are strongly inter-related. The Infrastructure and Capital Facilities Element should be “Infrastructure and Community Facilities Element” and it is premature to require costs and revenues in a master plan element. These are typically dealt with in a community’s Capital Improvements Program which usually also includes items such as major equipment or systems which are not facilities but are major capital expenses with extended service lives. The Water Facilities element is much more specific than the other elements and seems to be more on the order of regulations rather than setting legislative policy. The Public Health Element needs to be carefully redrafted to make it something that a planning board can relate to its intent and its relationship to their traditional land use responsibilities.

Master Plan Implementation Element and Self-Assessment Against Regional Plan

We support retaining the Implementation Element and adding a requirement for a self-assessment of local plan elements against similar subjects covered by a regional plan.

Subdivision Control Law (C.41, s.81) Changes

We support most of the changes proposed to the Subdivision Control Law and, in fact, believe this law deserves an extensive complete modernization but outside the current changes. Various provisions and the processes laid out in the current law probably lead to some of the issues with housing affordability across the State. We do suggest that the 21 day requirement for action on adjustments to lot lines be extended to 45 days as with most of our planning boards only meeting once a month, having to act within 21 days creates an undue burden on these volunteer boards and 45 days is not excessive if input is requested from other local officials and boards.

Approval Not Required and Minor Subdivisions (C.41, s.81HH (g)

BRPC opposes the concept of continuing the ANR provisions in any form (both in H.2420 and S.81) if communities adopt the minor subdivision provision and we support allowing municipalities to use a minor subdivision process as a very reasonable substitute. We believe the S.81 ANR provisions for those communities electing to adopt a minor subdivision process are overly complicated but do have the benefit of creating an ultimate cap on the number of ANR lots which may result. We are very opposed to H.2420 language which encourages lot (and driveway) creation along major roadways (state-numbered routes) which makes these arterials less safe and more congested.

Discriminatory Land Use Practices

While BRPC definitely does not support discriminatory land use practices, adding this to the Massachusetts Commission Against Discrimination's direct responsibilities will lead to very expensive litigation and considerable delays in decisions. The Courts are better equipped to deal with local land use decisions which may have either a discriminatory intent or result.

Study of Educational Uses Under Sec. 3 of C.40A

BRPC supports establishing a special commission to study the use and effectiveness of the zoning approval process for educational uses. We support such a study, with an additional stipulation that municipalities should be represented on such a commission.

Effective Dates

In order to manage the implementation of the wholesale changes which will be needed in probably every zoning ordinance and bylaw in the Commonwealth to comply with this law, we suggest that the effective dates for most provisions be more reasonable than one year and be a uniform 3 years after signing of the legislation. The exception would be for development impact fees which will require some time to perform the necessary studies and adoption of regulations to implement this provision but may not take three years to properly execute (many communities will not take this on at all; others may have more pressing needs).

Resources to Meet Requirements

Many of the new zoning and master plan requirements will take considerable resources to accomplish the needed changes to local zoning bylaws and ordinances and to bring master plans into compliance with the much more rigorous stipulations contained in this bill. Even communities with a planner (which is only five of 32 Berkshire municipalities) the major changes required will overwhelm their existing resources. Many of our communities are at or close to their levy ceilings and do not have the funding necessary to accomplish this, without taking away from other very pressing needs. Significant state funding will be needed to actually meet the new requirements. As we stated early in the letter, without state funding, many provisions of the bill constitute an unfunded state mandate.

The Berkshire Regional Planning Commission respectfully requests that the Joint Committee on Community Development and Small Business consider the modifications we request and then expeditiously favorably report out the legislation, as modified. We have attached a detailed, section-by-section analysis of S.81, H.2420 and S. 94 we developed to aid us in our deliberations.

Sincerely,

Nathaniel W. Karns, AICP
Executive Director

Attachment: July 19, 2017 Bill Comparison Table

Cc: The Honorable Stanley Rosenberg, President of the Senate
The Honorable Robert DeLeo, Speaker of the House
The Honorable Adam Hinds, Senator, Berkshire, Franklin and Hampshire District
The Honorable Paul Mark, Representative, 2nd Berkshire District
The Honorable Tricia Farley-Bouvier, Representative, 3rd Berkshire District
The Honorable Smitty Pignatelli, Representative, 4th Berkshire District
The Honorable Harriette Chandler, Senator, 1st Worcester
The Honorable Stephen Kulik, Representative, 1st Franklin District
The Honorable Sarah Peake, Representative, 4th Barnstable District
Geoffrey Beckwith, Massachusetts Municipal Association
Massachusetts Association of Regional Planning Agencies
Massachusetts Chapter, American Planning Association
Andre Leroux, Massachusetts Smart Growth Alliance

July 19 Version

MGL Chapter/ Section	Topic	S.81 Chandler	BRPC 2016 Comments	H.2420 Kulik/Peake	S.94 Rodrigues	BRPC Comments
C.23B, s3	DHCD to establish annual training program for planning & zoning boards	Yes		Yes		Supports work already done - agree
C.23B, new s31.(a)	Sec. of HED to develop a municipal opt-in program to advance various state goals. Communities would be certified which would give them certain powers and privileges	Yes		No	No	Need funding to do
C.23B, new s31.(b)	EOHED to develop certification guidelines, promoting various good practices as specified	Yes		No	No	Need funding to do
C.23B, new s31.(c)	Municipality to apply for certified status; RPA to "make itself available" to facilitate best practices, including providing model bylaws	Yes		No	No	Need funding to do
C.23B, new s31.(d)	EOHED to develop criteria to evaluate a municipal application; EOHED may decline to issue but shall provide a written statement of reasons for that and municipality can reapply. Certification is good for 10 years and may be renewed after that	Yes		No	No	Need funding to do
C.23B, new s31.(e)	EOHED to develop incentives to municipalities to become certified. Incentives may include: reduce minimum vesting of definitive subdivision plans; authorize Natural Resources Protection zoning that requires protection of 80% or greater of land; authorize impact fees to cover more topics than is generally to be allowed.	Yes		No	No	Need funding to do
C.23B, new s31.(f)	Various state agencies to give priority consideration for various grants to certified communities. State agencies to take into account land use goals of master plans in certified communities.	Yes		No	No	Need funding to do
C.23B, new s31.(g)	EOHED to issue regulations to implement the above sections	Yes		No	No	Need funding to do
C.40A, s1A	Strikes existing definition of <u>permit granting authority</u> (special permit granting authority is a different definition). Existing: "board of appeals or zoning administrator"	Yes (p.7)		Yes	No	Support- new definition below adds local option of empowering planning board as well
"	Add definition - Affordable Housing-restricted to 80% or less LMI occupants	Yes (p.7)		Yes	No	Don't understand necessity
"	Add definition – Artist	No		Yes	No	Oppose the requirement in the law that requires this definition
"	Add definition – Art Use	No		Yes	No	Oppose the requirement in the law that requires this definition
"	Add definition – By-right or As of right	Yes (p.7)		Yes	No	Don't understand necessity
"	Add definition – Cluster development or open space residential development	Yes (p.8)		Yes	No	Don't understand necessity
"	Add definition – Development Impact Fee	Yes (p.8)		Yes	No	Needed if approve Impact Fee section
"	Add definition – Form-based zoning	No		Yes	No	Don't understand necessity
"	Add definition – Inclusionary housing	Yes (p.8)		Yes	No	Needed if approve Inclusionary Zoning section
"	Add definition – Inclusionary zoning	Yes (p.8)		Yes	No	Needed if approve Inclusionary Zoning section
"	Add definition – Municipal affordable housing concessions	Yes (p.8)		Yes	No	Needed if approve Inclusionary Zoning section
"	Add definition – Natural resource protection zoning	Yes (p.9)		Yes	No	Needed if approve NRD Zoning section
"	Add definition - Permit granting authority –board of appeals, zoning administrator or planning board (planning board is added)	Yes (p.9)		Yes	No	This would eliminate special permit authority from select boards and city councils – both of which have this authority in some of our communities
C.40A, S1A	Add definition – Transfer of Development Rights	Yes (p.9)		Yes	No	Needed if approve TDR section
C.40A, new s1B	Full effect to home rule authority of cities and towns and preserves powers of MVC, CCC, and Nantucket	Yes (p.9)		Yes	No	Shouldn't be needed but simply reinforces what is already in the State Constitution

C.40A, S.3	Must allow accessory dwelling unit within single family dwelling, without special permit, on lot not less than 5,000 sf or on lot that meets Title V septic requirements. Can regulate setbacks, screening, bulk & height. May require that one of the two dwelling units be continuously owner0-occupied. May limit total number of accessory units in municipality to not less than 5 % of total non-seasonal single family housing units. No more than 1 additional parking space can be required. DHCD may exempt municipality if municipality has multi-family units of not less than 5% of total non-seasonal single family housing units or housing sale prices in the municipality have declined over the previous 3-year periodO	Yes (pp. 10-11)		Yes	No	Support
C.40A, s3	Accessory dwelling units must be permitted by right in all single-family residential zoning districts and may not "unreasonably regulate" their location, dimensions or design.	No		No	Yes (pp.3-4)	Oppose
C.40A, new s3A.(1)(a)	Set of definitions - all pertaining to the subsequent requirement for multi-family by-right districts.	Yes (p. 12)		Yes (but drops "gross density" & "lot" (p.10)	No	
C.40A, new s3A.(1)(b)	Requirement that zoning bylaws must provide at least 1 district in which multi-family housing is permitted by right; allows business, mixed use zones as meeting requirement. Cannot be age-restricted. Minimum gross density of no less than 8 units/acre in rural towns and 14 units/acre in other municipalities, subject to Title V. Should align with existing or planned water, sewer and transportation; be in locations eligible for 40R status; and accommodate a reasonable share of regional need for multi-family housing. Municipality may obtain a determination for DHCD or its regional planning agency as DHCD's designee that its multi-family provisions are consistent with this section. Such determination provides a verification of compliance when applying for state discretionary funding by state agency programs that include a preference for multi-family zoning. DHCD may waive for rural municipalities or if determines no eligible locations exist in the municipality.	Yes (pp. 12-13)		Yes – but rewrites, shortening from 21 lines to 9 lines (pp.10-11)	No (see change in s9 below)	Should explicitly allow "by-right with site plan review". Should exclude towns of less than XX people per square mile
C.40A, new s3A.(1)(c)	DHCD shall write regulations used to determine if a city or town has satisfied this section	Yes (p.13)		Yes (p.11)	No	
C.40A, new s3A.(2)	Requires open space residential development by right in every municipality, subject to Subdivision Control Law and local subdivision rules and regulations. DHCD & EOEEA shall provide guidelines to determine local compliance	Yes (pp. 13-15)		Totally different subsection (2) – see below	No (see change in s9 below)	Overall comment – conceptually for a lot of the regulations, while sensible, it is very questionable how they will be implemented here without substantial resources is very questionable.
C.40A, new s3A.(2)	For any zoning district requiring 40,000 sf or greater for sf lots, must provide for OSRD for any subdivision of 5 or more lots as of right, subject to Subdivision Control Law and local subdivision rules and regulations	No (see above)		Yes (p.11-13)	No	" Is important to modernize the Subdivision Control Law
C.40A, new s3A.(3)	The Attorney General may go to court to require municipal compliance with this section	Yes (p.15)		Yes (p.13)	No	
C.40A, s5	Adds language allowing, if in the zoning ordinance or bylaw, an amendment could be by less than supermajority (2/3) vote. "No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote" becomes "Unless otherwise prescribed in a zoning ordinance or by-law, no zoning ordinance or by-law or amendment thereto. . ."	Yes (p.15)		Yes (p.13)	No	Support

C.40A, s5	If a city or town fails to comply with the requirements of the new Section 3A above, amendments that meet those requirements are adopted by a simple majority (automatically does away with 2/3 vote requirement pertaining to s.3A adoption if no action was taken or 2/3 vote failed to be in compliance).	Yes (p.15)		Yes (p.15)	No	Would make this more straightforward to just state that initial votes to bring into compliance are by simple majority rather than by first a rejection and then goes to simple majority. Unclear path forward if the first vote fails to gain the 2/3rd majority. Who has the authority to require to go back to a simple majority vote – at that same town meeting? Who has the authority to go to the next step? At a new special town meeting special town meeting posting requirements? At the next annual town meeting (a number of towns do not have special town meetings very often, if ever)?
C.40A, s5	The report from the Planning Board regarding a proposed zoning change is to evaluate the consistency of the proposed ordinance or bylaw with the municipal master plan, if there is one	Yes (p.15)		Yes (p.14)	No	Approve
C.40A, s5	A change in the voting majority stipulated in the zoning bylaw or ordinance cannot take effect for 6 months after the vote; must be between simple majority and 2/3); and majority vote of less than 2/3 is not allowed if the amendment is subject to a landowner protest	Yes (p.16)		Yes (p.14)	No	Approve
C.40A, s6	There are three amendments in this section which pertains to when a building or special permit is affected by a bylaw change. The first two strike unneeded language in the 1st paragraph – clarifies that previous zoning applies if you have a permit before 1st notice of public hearing. The third deletes a paragraph which gives 12 months after issuance of a permit to commence construction and states that if a complete application for a building permit or special permit has been submitted, including the payment of fees, and written notice of the submission has been given to the city or town clerk before the 1st publication of notice of a zoning change, it is grandfathered for 2 years for a building permit and 3 years for a special permit.	Yes (pp.16-17)		Yes (pp.14-15)	No	What happens if submit an application after publication but before action? Which rules apply for that interim period, which can take months. Can the applicant simply proceed as if nothing has changed and initiate otherwise lawful construction? Then the zoning change is enacted; are they an existing non-conforming use or structure? Should the city/town get to postpone approval of the building permit or other permits until the change in the bylaws is dealt with by the legislative body? Probably should require a fairly limited time horizon for legislative consideration or otherwise the proposed project proceeds under the old rules.
C.40A, s6	Strikes an incredibly lengthy sentence in the 5th paragraph which repeatedly references January 1, 1976 and a five year grandfather provision after that.	Yes (p.17)		Yes (p. 15)		Approve
C.40A, s6	Strikes a reference to subdivision plans approved prior to January 1, 1976; subdivision plans must only be submitted prior to the public hearing on new zoning, and adds a 4 year grandfather period for minor subdivision plans (presuming that new provision in the Subdivision Control law is approved).	Yes (p.17)		Yes (p.16)		Approve
C.40A, s6	House bill strikes 6th paragraph - 3 year vesting of ANR plans	No		Yes (p.16)		Support House
C.40A, s6	House bill strikes in 7th paragraph the phrase “land shown on” an ANR plan; I think this responds to the problem that ANR filings are used to simply freeze every aspect of the zoning in place, and not simply to protect a use and standards that are based on existing zoning.	No		Yes (p.16)		Support House
C.40A, s6	House bill adds a final paragraph that allows form-based zoning (one of the definitions added above)	No		Yes (p.17)		Support House
C.40A, s9	Adds language that special permits run with the land and are not personal to the applicant or property owner	No		No	Yes (p.4)	No comment
C.40A, s9	Zoning bylaws must permit multi-family by right in at least one zoning district, covering at least 1.5% of the developable land area. Density of not less than 20 units per acre.	No		No	Yes (p.2)	Oppose

C.40A, s9	Special Permits – strikes 3rd thru 9th paragraphs. These pertain to multi-family, transfer of development rights, cluster development (OSRD), and shared elderly housing. Most of these are dealt with elsewhere in the legislation either requiring their use without special permit (multi-family and OSRD) or allowing their use (Transfer of Development Rights).	Yes (p.18)		Yes (p.17)		Support
C.40A, s9	Existing language in 5th paragraph allows cluster development or planned unit development (a fairly obsolete term) only by special permit. Bill drops "cluster development" from this (see below)	No		No	Yes (p.3)	Who cares?
C.40A, s9	Zoning bylaws shall require cluster development by right in residential zoning districts; do not allow requirement for submission of a "yield plan" to determine how many lots might be possible under standard lot sizes.	No		No	Yes (p.3)	Oppose
C.40A, s9	Allows municipalities, in their zoning bylaws, to issue special permits by simple majority vote (may retain supermajority)	Yes (p.18)		No – but see next line		Default should be existing voting by supermajority; with change to zoning, locality can make it by simple majority
C.40A, s9	Special permit issuance by simple majority, unless the zoning bylaw stipulates a supermajority vote	Yes (p.18)		Yes (pp.17-18)		
C.40A, s9	Changes period of lapsing of special permits from 2 years to 3 years; Allows special permit granting authority by majority vote, after public hearing is required by the bylaw, to extend a special permit for up to an additional 3 years. Application to extend must be filed at least 65 days prior to expiration.	Yes (pp.18-19)		No		1st change no longer necessary due to last year's Economic Development bill that was approved.
C.40A, s9	The House bill (in Sections 21 and 22, adds the word "principally" after the word "zoned" and cites lines 201 and 216 – *I cannot find where they are doing this or what it means*	Yes (p.19)		Yes (p.18)		Need to look at more carefully to figure out what this does
C.40A, s9	Special permit by simple majority vote of the board "then in office"	No		No	Yes (p.10)	Oppose
C.40A, new s9D	Explicit authority for site plan review, with various stipulations as to how process shall work	Yes (pp.19-23)		Yes (pp.18-22)		The 300 foot limit does not recognize that for lighting and noise, the impacts can be much greater distances than 300 feet. Can be very site specific due to topography, vegetation and other screening, height of lights and types, and atmospheric conditions for noise. No fixed distance can accommodate the variations.
C.40A, new s7A	Site plan review – Homebuilders version – precludes site plan review if undergoing special permit or variance; planning board can only impose those conditions which applicant agrees to or which are required by ordinance/bylaw; if site plan is submitted under a special permit or use variance process, it must be dealt with in a coordinated process and not be subject to a separate site plan review process.	No		No	Yes (pp.6-9)	Oppose. A variance should not be a site plan consolidation trigger. Applicant concurrence with conditions is unreasonable. Should allow special permit with site plan review (very typically used).
C.40A, new s9E	Authorization for development impact fees	Yes (pp.23-26)		Yes (pp.22-25)		Support
C.40A, new s9F	Authorization for inclusionary housing	Yes (pp.26-28		Yes (pp.25-27)		Support
C.40A, new s9G	No ordinance or bylaw may prohibit a developer requesting review under a 40B permit (for affordable housing) from requesting use a land use dispute avoidance process	Yes (p.28)		Yes (p.27)		Since the land use dispute avoidance process is not in the current version of the bill, this is not needed.
C.40A, new s9H	Art use and habitation by artists must be allowed either by right or by special permit	No		Yes (p.28)		Oppose – unnecessary and contrary to local home rule decision-making

C.40A, new s18?	No exaction of monetary payment or property from the applicant unless there are explicit findings of fact that the exaction satisfies federal constitutional requirements	No		No	Yes (p.9)	Oppose
C.40A, replace s10	Variance section – both bills strike the entire section and create a new section. As in previous bills, the standards for the ZBA to use in granting a variance are less restrictive. Are differences after the first two paragraphs between the two bills. The Senate bill (3rd paragraph) speaks only to use variances, which can only be used if the local ordinance/bylaw specifically allows them and it contains some specific standards for approval of a use variance. The House bill (3rd & 4th paragraphs) allows the bylaw to use special use permit process for dimensional variances and then has a shorter paragraph regarding use variances.	Yes (pp.29-31)		Yes (pp.28-30)		Prefer the Senate version, although Senate criteria for variance is the same (soil conditions, shape, typography, location of site or buildings on it) that are already required for variances
C.40A, s10	Replaces current standards for granting a variance with "result in practical difficulty"; ZBA is to weigh the applicant's interests against the detrimental impacts rather than "taking into consideration"; the considerations are somewhat looser					
C.40A, s11	Notices of public hearings under C.40A shall also be sent to the Boards of Health	Yes (p.31)		Yes (p.30)		Ok with this
C.40A, s15	Simple majority vote of ZBA members then in office for variances, rather than supermajority of allowable number (3 of 3; 4 of 5)	No		No	Yes (p.11)	Community should have choice to make approval by simple majority or by super majority, same as for special use permits above.
C.40A, s17	Court may require surety or cash bond from non-municipal plaintiffs in a zoning appeal. Senate allows up to $15,000 or the bond requirements of C.40R, whichever is greater. House simply allows up to $15,000.	Yes (p.31)		Yes (p.30)		Concern that this will put environmental justice communities at a disadvantage and for wealthier people, neighborhoods, communities, a $15,000 bond is not a deterrent to filing suit.
C.40A, s17	In filing a judicial appeal of a zba or special permit granting authority decision, only the record from the proceedings in front of the ZBA or SPGA may be used in court	No		No	Yes (p.11-13)	Oppose – due to a lack of expertise and resources in many small communities, the local boards often deal with permits and variances with limited information. For the few decisions which then are contested, they will find ways to provide more technical information during the legal proceedings.
C.40R, s3	Smart growth zoning or starter home zoning districts adopted by simple majority vote	No		Yes (pp.30-31)		Support
C.41, s81D. (a)	Strike out existing Master Plan language. Master Plan required every 10 years but can simply review and extend, revise or remake. Fifty lines has become 144 lines; nine required elements that are 1-2 sentences each become 5 required elements and 7 voluntary elements, some fairly simple and some extensive in what should be contained.	Yes (p.32)		Yes (p. 31)		The existing language is simpler and less intimidating to a planning board deciding whether to undertake development of a master plan; sections 1-3 (preamble only) provide good guidance and intent statements. There should be a general statement that planning boards should consult with other appropriate local officials and boards in developing the plan. A broad general comment about all the detailed sections below is that they are just too much for a small town planning board to grasp and will lead to less planning, not more. The depth of the requirements basically is a state mandate which requires funding to accomplish.
C.41, s81D. (b)	Adds that is basis for land use decision-making and may support and provide rationale for the zoning, subdivision regulations, and other laws, regulations, policies and capital expenditures.	Yes (p.32)		Yes (p.31)		Support
C.41, s81D (c)(i)	Master plan goals and objectives; must have public participation process; goals and objectives must address, at a minimum, the elements required in the plan	Yes (pp. 32-33)		Yes (p.32)		Support

C.41, s81D (c)(ii)	Housing element – five lines is now eleven; much more detailed requirements; housing production plan under C.40B, s.20-23) meets the evaluation requirement.	Yes (p.33)		Yes (p.32)		Support concept in principle but would have to be fully funded by the State in order for many communities to comply.
C.41, s81D (c)(iii)	Natural Resources and energy management element – four lines just on natural and cultural resources is not fifteen on natural resources and energy; much more detailed requirements; must be prepared jointly with local agricultural commission (if have one).	Yes (pp. 33-34)	We had commented these should be different elements	Yes (pp. 32-33)		Same issue with funding as above; should allow an Open Space and Recreation Plan to be counted as equivalent for the Natural Resources element; Energy and Climate Change should be a separate element (not rolled in with Natural Resources) and should incorporate both mitigation and adaptation, as well as a vulnerability assessment.
C.41, s81D (c)(iv)	Land Use & Zoning element – 3 general guidance sentences become six lengthy requirements – (A) land uses, existing & proposed; (B) land use suitability analysis and related transportation; (C) growth & development areas promoting compact development; (D) identify economic development areas; (E) relationship of development intensity & land and public facility capacity; (F) a land use map	Yes (p.34)		Yes (pp.33-34)		
C.41, s81D (c)(v)	Implementation element – defines & prioritizes actions needed to achieve the goals and objectives, including needed changes to regulatory structures	Yes (pp. 34-35)		Yes (p. 34)		Support requiring.
C.41, s81D (d)	Master plan may include 7 other elements, depending on community characteristics	Yes (p.35)		Yes (p.34)		
C.41, s81D (d)(i)	Economic development element-analyze local economic base; assess opportunities and barriers to econ. dev.; assess opportunities and barriers to agriculture and forestry; assess opportunities and barriers to self-employment and home-based occupations	Yes (p.35)		Yes (p.34)		
C.41, s81D (d)(ii)	Cultural resources element – identify and strategies to manage and protect.	Yes (p.35)		Yes (p. 34)		*Might suggest this be a "Cultural Resources & Historic Preservation Element." While the two might be synonomous, are not necessarily so but have strong relationship typically.*
C.41, s81D (d)(iii)	Open space protection and recreation element – inventories recreational facilities and open spaces and contain policies and strategies; OSRP approved by DCS shall constitute this element.	Yes (p.35)		Yes (p.35)		*Overlaps with the Natural Resources Element which is a required element and recreational facilities could be included as part of the infrastructure and capital facilities element. Support being able to use the OSRP as this element.*
C.41, s81D (d)(iv)	Infrastructure and capital facilities element – shall detail scheduled expansion or replacement of public facilities, infrastructure and circulation system (transportation) and anticipated costs and revenues	Yes (pp. 35-36)		Yes (p.35)		*It is premature to require costs and revenues in a master plan. Rather than term it "capital facilities", a more useful and common term would be "community facilities."*
C.41, s81D (d)(v)	Transportation element – covering circulation, parking and transportation systems, including public transit, bicycling, walking and ADA compliance, and identifying strategic investments to encourage smart growth, reduce greenhouse gases and facilitate new development with a variety of transportation options.	Yes (p.36)		Yes (p.35)		*This should be a <u>required</u> element.*
C.41, s81D (d)(vi)	Water management element – new element not in existing law; many specifics are included in this element's components	Yes (pp.36-37)		Yes (pp. 35-36)		*This element contains many more specifics than the others and reads more similarly to regulations than legislation. Much of it one can suspect comes as a result of last summer's unusual drought. It could be shortened by simply including the language that is in (E). This should be more generalized and it should be clear that if the community chooses to develop this element, it should have flexibility in what and how it addresses this.*
C.41, s81D (d)(vii)	Public health element – new element not in existing law; gives some general guidance but not in lay-persons terms.	Yes (p.37)		Yes (p.36)		*Being a new section, the language needs to be carefully redone to make it so that planning boards can relate to the intent and its relationship to*

						their traditional land use responsibilities. Simplify the language. As with Ag Commissions and the Natural Resources element, the Board of Health should be involved.
C.41, s81D (d)	"Any elements included in a master plan shall include a self-assessment against similar subject matter in a regional plan . . ."	Yes (p.37)		Yes (p.37)		*Support*
C.41, s81D (e)	Master plan adoption or amendment by simple majority vote of planning board and subsequent city council, town council or town meeting by simple majority vote.	Yes (pp. 37-38		Yes (p.37)		*Support*
	Subdivision Control Law – C.41					
s.81L	This is inserted into the definition of "subdivision" in the portion that exempts ANRs as not being "subdivisions". It permits use of a minor subdivision provision by the municipality in place of the ANR exemption.	Yes (p.38)		Yes (p.38)		*Support*
s.81L	Definition of "lot" is tweaked ("defined" instead of "definite" boundaries); "Minor Subdivision" definition: frontage on public way, with sufficient width, suitable grades and adequate construction to meet needs of vehicular traffic and meeting required lot frontage requirements.	Yes (pp. 38-39)		Yes (p. 38)		*Support*
s.81O	Takes away ability to subdivide lands by ANR if minor subdivision ordinance or bylaw has been adopted	Yes (p.39)		Yes (p. 39)		*Support*
s.81Q	Total travel lane widths not greater than 24 feet are not excessive	Yes (p.40)		No		*Support*
s.81U	Eliminates the within 3 year restriction on building on designated parkland in a subdivision	Yes (p.40)		Yes (p.39)		
S.81X	Requires a professional opinion, rather than a certificate (existing law), that the property lines and right of way lines are all existing and not new. There is a new provision for adjustments to lot lines being dealt with in a similar fashion as ANR's are now (21 days or deemed approved) with various stipulations about what is required of the surveyor in a professional opinion in order to record a lot line adjustment.	Yes (pp.40-41)		Yes (pp.39-40)		*Should request that this be 45 days, not 21, similar to our recent request on ANR approval deadlines in a different bill.*
S.81BB	Changes language somewhat in what happens with a civil action regarding a subdivision approval; allows the imposition of costs and a requirement for a surety or cash bond for civil actions.	Yes (p.41)		Yes (pp. 40-41)		*Support*
S.81HH. (a)	New section allowing minor subdivision provision by simple majority vote (presumably by City Council, Town Council, or Town Meeting).	Yes (p.42)		Yes (p.41)		*Support*
(b)	Minor subdivision up to 6 lots, municipality may increase that number	Yes (p.42)		Yes (p.41)		*Support*
(c) (Senate)	No public hearing if each lot has frontage on public way; no public notification; be subject to requirements for location of public way; be subject to any requirement for road widths greater than 22 feet; be subject to any requirement more stringent than in the general subdivision rules & regulations; nor be denied by less than a 2/3 vote of the planning board	Yes (p.42)		No		
(c) (House)	Restricts to no more than 6 or more allowed lots within some set period of years; can lessen or eliminate process and bonding provisions of 81U; lessen or eliminate subdivision rules & regulations; and may accept payment in lieu of actual required improvements to an existing way.	No		Yes (pp. 41-42)		
(d) House	Similar but some differences to Senate (c) above.	No		Yes (p. 42)		*House language is a bit clearer and easier to follow.*
(d) Senate (e) House	Planning board must take action within 65 days for minor subdivision on existing public way. Deemed approved if take no action.	Yes (p.42)		Yes (p. 42)		

(e) Senate (f) House	Planning board must take action within 95 days for minor subdivision on new public way. Deemed approved if take no action.	Yes (pp. 42-43)		Yes (p.42)		
(f) Senate	The city or town, by simple majority vote of the legislative body, can define minor subdivision more broadly, lessen or eliminate a requirement otherwise applicable to subdivisions, and accept payment in lieu of actual required improvements to an existing way [similar to (c) House]	Yes (p.43)		No		
(g) Senate	In a very lengthy and complicated section, 61 and 61A property may use ANR process for 2 additional lots each year even if city/town has not adopted minor subdivision process; the number of division lots ultimately may not exceed 6; if the remaining area after division does not qualify for 61 or 61A, the division lots cannot exceed 2 acres or the lot area required by more than 50%, whichever is greater;	Yes (pp. 43-44)		No (see next)		*Very complicated language. Do not agree with this provision.*
(g) House	Regardless of adopting a minor subdivision provision, ANR continues if the entire lineal frontage required by local zoning is on a state-numbered route; or division of land in any one year to create no more than 2 lots with minimum frontage and not more than 1.5 times the required lot area; both for lands under 61 or 61A or land that is under the same ownership and within the same parcel or immediately adjacent parcel	No (see above)		Yes (pp. 42-43)		*Appears to basically allow 2 lot ANR in many situations but adds an acreage maximum to it of 1.5 times minimum lot size. Do not agree with this provision.*
C.151B, s.4	Discriminatory land use practice is unlawful practice subject to complaint process of the Mass. Commission Against Discrimination	Yes (pp. 44-45)		Yes (pp. 43-44)		*The specifics of the existing processes of the MCAD and the law supporting it are problematic.*
C.185, s.3A	Adds to potential Land Court jurisdiction (rather than just Superior Court) disputes over commercial or industrial development involving 25,000 sf or more of gross floor area. Places requirements on trial court to transfer the case file to the land court within 20 days after notice.	Yes (pp. 45-47)		Yes (pp. 44-46)		*No comment*
C.249, s.4	Sixty day requirement for commencement of legal action – but not clear what its impact actually is ("Except as otherwise provided by law . . .")	Yes (p.47)		Yes (p.46)		*No comment*
	Sec 36A (Senate) – special commission to study the use and effectiveness of the zoning approval process of educational uses under Sec. 3 of C.40A	Yes (pp. 47-50)		No		*Municipal representation should be added and support the study.*
	Sec 36B (Senate) – EOHED to promulgate regulations to implement C.23B, s.3 no later than 180 days after effective date (these are the municipal opt-in provisions in the early part of the act)	Yes (p.48)		No		*Support*
	Sec 37 (Senate) and Sec 40 (House) – inclusionary zoning adopted prior to effective date of this act has 3 years to revise to conform; after 3 years if not revised, only those provisions that conform can be used	Yes (pp. 48-49)		Yes (p.46)		*Support*
	Sec 38 (Senate) and Sec 46 (House) – master plans already adopted continue in full force and effect for 10 years	Yes (p.49)		Yes (p.46)		*Support*
	Sec 39 (Senate) and Sec 42 (House) – site plan review adopted prior to effective date of this act has 3 years to revise to conform; after 3 years if not revised, only those provisions that conform can be used	Yes (p.49)		Yes (pp. 46-47)		*Support*
	Sec 40 (Senate) and Sec 43 (House) – any local zoning variance provisions adopted prior to effective date of this act has 3 years to revise to conform; after 3 years if not revised, only those provisions that conform can be used	Yes (pp. 49-50)		Yes (p.47)		*Support*
	Sec 41 (Senate) and Sec 44 (House) – any variance granted prior to the effective date of the act is governed by the terms of the variance and runs with the land, unless the variance prescribed otherwise	Yes (p.50)		Yes (p.47)		*Support*

	Sec 42 (Senate) and Sec 45 (House) – Section 5 of both Senate and House bills (accessory dwelling provisions) applies effective July 1, 2017 (Senate bill) or 1 year after passage of the legislation (House bill)	Yes (p.50)		Yes (p.47)		*Need reasonable time after effective date – 3 years as with the last section.*
	Sec 43 (Senate) and Sec 46 (House) – development impact fee effective date (January 1, 2018-Senate), (18 months after passage of the legislation-House)	Yes (p.50)		Yes (p.47)		*Should be effective immediately upon passage.*
	Sec 44 (Senate) and Sec 47 (House) – Sections 6 & 8 of both bills (multi-family by-right, OSRD by-right, and the special adoption process for those effective dates (July 1, 2019-Senate), (3 years after passage of the legislation-House); the promulgation of regulations takes effect immediately upon the effective date of the act	Yes (p.50)		Yes (p.47-48)		*Support*