

Bill Section Descriptions

“AN ACT PROMOTING THE PLANNING AND
DEVELOPMENT OF SUSTAINABLE COMMUNITIES”
House Bill #1859

Principal Sponsors:
Representative Stephen Kulik
Senator Daniel Wolf

<u>BILL SECTION</u>	<u>STATUTE SECTION</u>	<u>DESCRIPTION</u>
1.	40A:1A	Expands existing definition of “permit granting authority” to include planning boards and others as locally designated.
2.	40A:1A	Adds definitions for 12 new terms in the Zoning Act. Redefines “cluster development” in a more general manner.
3.	40A:2	Statement that the Zoning Act shall be construed to give full effect to the 1966 Home Rule Amendment to the Massachusetts Constitution. Enumerates certain powers of cities and towns, whether under home rule or as specifically authorized in the Zoning Act. States that the Zoning Act shall not be construed to limit certain special acts of the legislature, in particular the Cape Cod or Martha’s Vineyard Commission Acts.
4.	40A:5	Retains the default of a two-thirds majority required to adopt or amend zoning, but allows for cities and towns to vote in a lesser vote majority.
5.	40A:5	Stipulates that the zoning vote majority may be anywhere between a simple and a two-thirds majority, any change must be made by the vote majority then in effect, and such a change does not become effective for 6 months after the vote.
6.	40A:6	This section strikes out the old vested rights language for building and special permits. In a later section the bill makes a fundamental change in the vested rights protections accorded to these permits.
7.	40A:6	Same as above.
8.	40A:6	States the new vested rights protections accorded to building and special permits, and the duration of the protections, two and three

years, respectively. Extends the protections equal to any period where a moratorium upon construction is imposed.

9. 40A:6 Eliminates the five-year dimensional vested rights protection for up to three adjacent lots in common ownership.
10. 40A:6 States the new vested rights protection accorded to definitive subdivision plans, and the duration of the protection – for eight years after approval. The same vested rights protection applies to minor subdivision plans, but for four years. Extends both protections equal to any period where a moratorium upon construction is imposed.
11. 40A:6 Eliminates the three-year use vested rights protection for so-called ANR lots.
12. 40A:6 Strikes reference to “land shown on” a definitive subdivision plan, which brings the language into conformance with new vested rights protections for such plans (protection is for the plan, not the “land shown on” the plan).
13. 40A:9 Section 9 of the Zoning Act is re-named “Special Provisions” because the section deals with more than just special permits.
14. 40A:9 Eliminates outdated (in view of 1966 Home Rule Amendment) and limiting language relative to: special permits for increased density, special permits for multi-family residential uses in non-residentially zoned areas, transfer of development rights, cluster development, planned unit development, and shared elderly housing. Striking these paragraphs enhances rather than inhibits the use of these techniques.
15. 40A:9 Restates the previously stricken third paragraph relative to multi-family residential uses in non-residentially zoned areas. Requires a special permit and same safeguards, but phrased in post-Home-Rule-Amendment language.
16. 40A:9 Resets the default vote majority to approve special permits to a simple-majority, but allows for an increased majority by ordinance or bylaw (not to exceed today’s requirements).
17. 40A:9 Sets the minimum duration of a special permit at 3 years before it lapses (if not used), which may be increased by ordinance or bylaw. Such period shall not include the time required to pursue or await the determination of an appeal. Establishes a process

whereby the duration of a special permit may be extended before it lapses.

18. 40A:9 Amends the exemption provided for hazardous waste facilities in industrial use zones such that if the area is zoned as mixed-use with an industrial component, the industrial use must be the principal use in order to secure the exemption for such facilities.
19. 40A:9 Amends the exemption provided for solid waste facilities in industrial use zones such that if the area is zoned as mixed-use with an industrial component, the industrial use must be the principal use in order to secure the exemption for such facilities.
20. 40A:9D Inserts a new section into the Zoning Act, 9D, which standardizes the statutory requirements for site plan review, including a two-year grace period to bring existing ordinances or bylaws into compliance.
21. 40A:9E Inserts a new section into the Zoning Act, 9E, which sets out the statutory requirements for development impact fees.
22. 40A:9F Inserts a new section into the Zoning Act, 9F, which sets out the statutory requirements for inclusionary zoning (to require affordable housing). Written in a manner general enough to encompass most existing ordinances or bylaws of this type.
23. 40A:9G Inserts a new section into the Zoning Act, 9G, which sets out the statutory requirements for a local voluntary land use dispute avoidance process.
24. 40A:10 Strikes out the existing section on zoning variances and inserts a new section that allows greater local discretion.
25. 40A:11 Adds the local board of health as a “party in interest” for the purposes of providing written notice of a public hearing on a zoning matter.
26. 40X Adds a new chapter to the General Laws, 40X, which sets out the statutory requirements for consolidated permitting, which is an option for applicants wishing to coordinate the review of certain larger projects.
27. 40Y Adds a new chapter to the General Laws, 40Y, the Planning Ahead for Growth Act, which sets out the statutory requirements and benefits for communities that “opts-in” to the program. A budget line of \$2,000,000 is provided to fund a technical assistance

program in the form of grants to municipalities and regional planning agencies for the preparation and review of implementing regulations. This is the only budget item in H.1859.

28. 41:81D Strikes the existing section on master plans and inserts an entire new section that, among other things, reduces the number of required elements to 5 (7 more are optional). Communities in Barnstable or Dukes Counties may instead adopt a local comprehensive plan pursuant to the special acts that apply there; such plans if approved by the RPA shall be deemed a master plan for the purposes of this section.
29. 41:81L Strikes the existing definition of the term “subdivision” and rewrites it to eliminate the so-called ANR exemption.
30. 41:81L Adds a definition for “minor subdivision” while retaining references to the so-called ANR standards applicable to communities that do not adopt regulations for minor subdivisions (effect is to keep ANR in place until regulations for minor subdivisions are adopted by the planning board).
31. 41:81O Eliminates the ability to alter the lot layout of an approved subdivision via the so-called ANR process; instead requires that either the modification process in 41:81W be used or such modifications be defined and regulated as minor subdivisions.
32. 41:81P Strikes out the existing section 81P pertaining to procedures for so-called ANR divisions and replaces it with a section describing the statutory requirements for minor subdivisions. Existing ANR procedures apply until regulations of minor subdivisions are adopted by planning board.
33. 41:81Q Establishes a presumption that subdivision roadway standards in excess of those applied to the reconstruction of public ways are unlawfully excessive. Width requirements for total travel lanes not exceeding 24 feet shall not be presumed excessive.
34. 41:81Q Allows subdivision regulations to require parks within subdivisions for the benefit of the residents, but not exceeding 5 percent of the total project area.
35. 41:81T Eliminates remnant ANR language.
36. 41:81U Allows subdivision regulations to require permanent parks within subdivisions, as above.

37. 41:81X Eliminates remnant ANR language.
38. 41:81X Eliminates remnant ANR language.
39. 41:81X Establishes streamlined procedures for the approval and recordation of perimeter plans for existing lots and, under certain conditions, plans showing lot line changes.
40. 41:81BB Establishes that a court's review of an appeal of an approved subdivision plan shall be on the existing record of the planning board (*certiorari* review), not on new evidence (*de novo* review). Imposes additional burdens of proof and aggrievement on appellants, including appellants who are the applicant.
41. 185:3A Gives the permit session of the Land Court original jurisdiction over appeals relating to the development of real property.
42. 185:3A Requires that upon petition qualified cases shall be transferred to the permit session of the Land Court.
43. 240:14A Provides that cities and towns may use consistency with an adopted master plan to defend their zoning ordinances and bylaws against challenge. Inconsistency shall not count against a city or town in this regard.