

SENATE No. 96

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 passage of the accompanying bill:

An Act to promote livable communities.

PETITION OF:

NAME:

Marc R. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00150 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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

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

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

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

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

15 Section 2.(a) State principles and goals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 “Secondary growth impacts”, growth that occurs as a result of making infrastructure available.

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

60 Section 4. (a) There shall be a council for a sustainable commonwealth, known in this
61 chapter as the council, to be chaired by the governor or his designee. The council shall consist of
62 the following voting members: the director of housing and community development or her
63 designee, the secretary of environmental affairs or his designee, the secretary of transportation
64 and construction or his designee, the secretary of administration and finance or his designee and
65 the director of economic development or his designee. The council shall also include the
66 following non-voting members, who shall serve in an advisory capacity: the chairman of the
67 Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts
68 Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of
69 the Massachusetts historical commission or his designee, two chairs of regional planning agencies
70 nominated by the governor, a municipal planning representative appointed by the governor and a
71 professional planner appointed by the governor.

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

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

76 (2) resolve inconsistencies among and between each of the capital and operating plans of
77 the agencies and regional sustainable development plans, and any inconsistencies that cannot be

78 resolved through discussion and mediation shall be resolved by a majority vote of the voting
79 members of the council;

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

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

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

87 Section 5. (a) By March 15 of every odd year, each agency shall develop a five-year
88 agency sustainable development plan, known in this chapter as an agency plan that is consistent
89 with the state goals, principles and policies outlined in section 2 and that meets the following
90 criteria:

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

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

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

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

107 Section 6. (a) the executive office of environmental affairs, the department of economic
108 development, the department of housing and community development, and the executive office of
109 transportation and construction, when awarding discretionary grants to municipalities, excluding
110 any grants made under chapter 90, shall give priority to municipalities that have adopted certified
111 local sustainable development plans pursuant to chapter 41, section 81D as amended by this Act.

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

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

119 SECTION 3. Section 62A of chapter 30 of the General Laws, as appearing in the 2000
120 Official Edition, is hereby amended by adding the following paragraph:

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

124 SECTION 4. The secretary, chairman or director of every agency subject to chapter
125 132C of the General Laws, within one year from the effective date of this act, and thereafter on an
126 annual basis, shall report on the status and effectiveness of their compliance with said chapter
127 132C. The reports shall be submitted to the governor, the clerks of the house of representatives
128 and the senate and the chairs of the joint committee on natural resources and agriculture, and shall
129 be made available by each agency for public review.

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

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

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

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

143 "Council", the council for a sustainable commonwealth created under chapter
144 132C.

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

147 “Regional sustainable development plan”, a regional plan.

148 “Sustainable”, purposefully designed to bring about efficient, safe, healthy,
149 economically vital communities that include a sufficient amount of affordable
150 housing while simultaneously maintaining or enhancing the environment, the
151 natural resource base and the ongoing functioning of natural ecosystems that are
152 fundamental to sustaining life and prosperity for current as well as future
153 generations.

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

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

165 (2) Regional plans shall consider all local sustainable development plans, created
166 under section 81D of chapter 41 as amended by this Act, of municipalities within the
167 planning region, which are in effect at the time the regional plan is being developed by
168 the regional planning commission. If any local plans within a region’s planning district
169 are inconsistent with one another, the regional planning commission shall encourage the

170 conflicting municipalities to create consistent plans and make recommendations for
171 bringing the plans into compliance with one another.

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

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

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

193 enable the commonwealth's agencies to develop capital spending plans that are consistent
194 with the regional plans.

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

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

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

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

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

216 sustainable development plan under section 81D of chapter 41 of the General Laws as amended by
217 this Act.

218 (g) Regional planning commissions shall be responsible for developing a process to
219 review major developments affecting more than one community. Regional planning commissions
220 will establish a definition for major developments and procedures for comment and review. The
221 Planning Board of any municipality within a region can request that the regional planning
222 commission hold a public hearing on a major development. Any comments or recommendations
223 that result from the review will be shared with the Massachusetts Environmental Policy Act
224 (MEPA) office, if the project requires MEPA review, or with the appropriate decisionmaking and
225 permitting authorities.

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

228 Section 81D

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

230 “Council”, the council for a sustainable commonwealth created under chapter 132C.

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

234 “Local sustainable development plan”, a local plan.

235 “Regional planning commissions”, organizations established under chapter 40B.

236 “Regional sustainable development plans ” or “regional plans”, plans developed
237 under section 5 of chapter 40B.

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

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

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

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

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

261 (ii) Land use plan element illustrating present land uses and designating the proposed
262 distribution, location, and inter-relationship of public and private land uses. This element shall
263 relate population density and building intensity to the capacity of land available and to planned
264 facilities and services. A land use plan map illustrating the land use policies of the municipality
265 shall be included.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

326 (c) A municipality shall present its completed plan to the applicable regional
327 planning commission for review. The regional planning commission shall, within 60 days
328 of receipt of the plan, prepare and submit to the municipality a written review of the plan
329 that shall certify whether the plan satisfies all the goals and elements required by

330 subsection (b), whether it is both internally consistent and consistent with the applicable
331 regional sustainable development plan, and whether it has given consideration to the local
332 sustainable development plans of neighboring municipalities. The review shall identify
333 any deficiency or omission with respect to each required element and goal described in
334 subsection (b). The review shall include, where appropriate, recommendations as to how
335 any omissions or deficiencies may be rectified. Upon receipt of the regional planning
336 commission's certification indicating satisfactory compliance with this section, the
337 planning board shall file the local plan with the office of the clerk of the municipality.

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

348 (e) Municipalities shall have five years to make substantial progress towards
349 implementation of their plans. If after five years from the date of certification, the applicable
350 regional planning commission deems that little or no progress has been made towards
351 implementation of the plan through changes in bylaws or ordinances, the plan will be decertified
352 and the regional planning commission shall notify the council of the decertification.

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

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

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

371 (d) Provided further that chapters 236 and 246 of the acts and resolves of 2002 be
372 amended to authorize and direct the secretary of environmental affairs and the secretary of
373 transportation to appropriate existing funds not to exceed \$35,000,000 for the purposes outlined
374 in this act. Of this amount, \$5,500,000 will be for one time grants to be made to the regional
375 planning commissions established under chapter 40B of the General Laws to facilitate
376 compliance with section 5 of said chapter 40B as amended by this act, in accordance with the

377 following formula: base funding of \$100,000 per year per regional planning commission, plus 70
378 cents per capita based upon the most recent U.S. Census data on population.

