SENATE DOCKET, NO. 417 FILED ON: 1/19/2011

SENATE . . . . . No. 1846

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:

An Act to promote livable communities..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	
	☐ *[District]*
	☐

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SENATE . . . . . No. 1846

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 1846) of Marc R. Pacheco for legislation to promote livable communities. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *96* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

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

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

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

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

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 polices 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
23 resources 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
49 the 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
55 available.

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

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

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

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

77 (2) resolve inconsistencies among and between each of the capital and operating plans of
78 the agencies and regional sustainable development plans, and any inconsistencies that cannot be
79 resolved through discussion and mediation shall be resolved by a majority vote of the voting
80 members of the council;

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

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

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

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

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

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

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

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

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

114 (b) the executive office of environmental affairs, the department of economic
115 development, the department of housing and community development, and the executive office

116 of transportation and construction, when awarding grants that require a municipal match, shall
117 reduce the match requirement by no less than 10% for municipalities that have adopted certified
118 local sustainable development plans.

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

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

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

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

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

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

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

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

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

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

148 "Regional sustainable development plan", a regional plan.

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

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

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

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

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

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

183 (3) The executive committee of each regional planning commission shall review its
184 regional plan for compliance with this section and internal consistency before forwarding it to its
185 commission members for approval. If a regional plan is approved by a simple majority vote of

186 the regional planning commission's members, the plan shall be considered approved and there
187 shall be a rebuttable presumption that the plan is fully compliant with this section and internally
188 consistent. Once the regional plan is approved by a majority vote of the commission members,
189 the regional planning commission shall forward it to the council for sustainable commonwealth,
190 created under chapter 132C, to enable the commonwealth's agencies to develop capital spending
191 plans that are consistent with the regional plans.

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

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

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

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

209 (f) The regional planning commissions shall develop initial regional sustainable
210 development plans under section 5 of chapter 40B of the General Laws no later than 18 months
211 after the effective date of this act. Under no circumstances shall the failure of a regional
212 planning commission to initiate or complete a regional plan prevent a municipality from
213 developing a local sustainable development plan under section 81D of chapter 41of the General
214 Laws as amended by this Act.

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

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

225 Section 81D

226 For purposes of this section, the following words shall have the following meanings:

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

228 "Land use regulations", regulations, administered in whole or in part by a municipality,
229 which materially affect the purposes of this section, including but not limited to: zoning,
230 subdivisions, wetlands, public health and transportation.

231 "Local sustainable development plan", a local plan.

232 "Regional planning commissions", organizations established under chapter 40B.

233 "Regional sustainable development plans " or "regional plans", plans developed under
234 section 5 of chapter 40B.

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

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

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

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

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

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

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

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

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

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

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

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

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

287 (x) Implementation program element which defines and schedules the specific municipal
288 actions, including the identification of the anticipated costs and revenues, associated with each
289 element of the plan. Scheduled expansion or replacement of public facilities or circulation
290 system components and the anticipated costs and revenues associated with accomplishments of

291 such activities shall be detailed in this element. This element shall specify the process by which
292 the municipality's regulatory structure shall be amended so as to be consistent with the plan.

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

295 (4) In developing local plans, the municipalities shall each employ an open, inclusive and
296 broadly participatory process. The municipalities shall undertake public notification and
297 participation procedures that are designed to seek widespread public participation in the local
298 planning process, including but not limited to input from the following: local officials and
299 residents of the municipality, neighborhood representatives, business and industry
300 representatives in the community, environmental and public health groups, housing advocates
301 and providers, advocates for the local watershed area or areas; conservation commissions; the
302 appropriate regional planning commission, representatives of neighboring municipalities and
303 representatives of the commonwealth's agencies and departments that have infrastructure or
304 investments in the municipality.

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

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

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

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

320 (c) A municipality shall present its completed plan to the applicable regional planning
321 commission for review. The regional planning commission shall, within 60 days of receipt of the
322 plan, prepare and submit to the municipality a written review of the plan that shall certify
323 whether the plan satisfies all the goals and elements required by subsection (b), whether it is both
324 internally consistent and consistent with the applicable regional sustainable development plan,
325 and whether it has given consideration to the local sustainable development plans of neighboring
326 municipalities. The review shall identify any deficiency or omission with respect to each

327 required element and goal described in subsection (b). The review shall include, where
328 appropriate, recommendations as to how any omissions or deficiencies may be rectified. Upon
329 receipt of the regional planning commission's certification indicating satisfactory compliance
330 with this section, the planning board shall file the local plan with the office of the clerk of the
331 municipality.

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

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

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

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

360 (c) Factors to be used by the council in determining the amount of grant funds to be
361 provided to each municipality shall include, but not be limited to: complexity of the planning
362 issues confronting each municipality, the planning capacity of the municipality, and the capacity

363 of each municipality to fund the planning process. Regulations shall also create an incentive
364 program for multi-municipal planning.

365 (d) Provided further that chapters 236 and 246 of the acts and resolves of 2002 be
366 amended to authorize and direct the secretary of environmental affairs and the secretary of
367 transportation to appropriate existing funds not to exceed $35,000,000 for the purposes outlined
368 in this act. Of this amount, $5,500,000 will be for one time grants to be made to the regional
369 planning commissions established under chapter 40B of the General Laws to facilitate
370 compliance with section 5 of said chapter 40B as amended by this act, in accordance with the
371 following formula: base funding of $100,000 per year per regional planning commission, plus 70
372 cents per capita based upon the most recent U.S. Census data on population.