

**SENATE . . . . . No.**

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**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

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In the Year Two Thousand and Nine

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### 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

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

8

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

12

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

16

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

19

20 Section 2.(a) State principles and goals

21

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

24

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

27

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

29

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

33

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

35

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

37

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

39

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

42

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

45

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

47

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

49

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

53

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

55

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

58

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

60

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

63

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

65

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

69

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

72

73 “Agency” any agency, department, board, commission, authority, and instrumentality of the  
74 Commonwealth and any authority or any political subdivision which is responsible for siting,  
75 designing, funding, constructing or permitting of infrastructure projects, public facilities or  
76 private development or which is responsible for which is responsible for transportation, water  
77 supply, waste water treatment and disposal and solid waste management facilities or  
78 infrastructure.

79

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

81

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

87

88           Section 4. (a) There shall be a council for a sustainable commonwealth, known in this  
89 chapter as the council, to be chaired by the governor or his designee. The council shall consist  
90 of the following voting members: the director of housing and community development or her  
91 designee, the secretary of environmental affairs or his designee, the secretary of transportation  
92 and construction or his designee, the secretary of administration and finance or his designee  
93 and the director of economic development or his designee. The council shall also include the  
94 following non-voting members, who shall serve in an advisory capacity: the chairman of the  
95 Massachusetts Water Resources Authority or his designee, the chairman of the Massachusetts  
96 Bay Transit Authority or his designee, the secretary of the commonwealth acting as chairman of  
97 the Massachusetts historical commission or his designee, two chairs of regional planning  
98 agencies nominated by the governor, a municipal planning representative appointed by the  
99 governor and a professional planner appointed by the governor.

100

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

103

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

106

107           (2) resolve inconsistencies among and between each of the capital and operating plans  
108 of the agencies and regional sustainable development plans, and any inconsistencies that

109 cannot be resolved through discussion and mediation shall be resolved by a majority vote of the  
110 voting members of the council;

111

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

115

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

118

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

121

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

126

127 (1) all agencies shall promote, assist and pursue the rehabilitation and revitalization of  
128 infrastructure, structures, sites, and areas previously developed and still suitable for economic



129 reuse. Such rehabilitation and revitalization, where practicable, shall be deemed preferable  
130 over construction of new facilities or development of areas with significant value in terms of  
131 environmental quality and resources. However, all agencies shall recognize that a lack of low  
132 and moderate-income housing may necessitate new construction of affordable and mixed  
133 income housing in areas in which there is an imbalance between housing supply and demand.

134

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

138

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

141

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

146

147 Section 6. (a) the executive office of environmental affairs, the department of economic  
148 development, the department of housing and community development, and the executive office  
149 of transportation and construction, when awarding discretionary grants to municipalities,

150 excluding any grants made under chapter 90, shall give priority to municipalities that have  
151 adopted certified local sustainable development plans pursuant to chapter 41, section 81D as  
152 amended by this Act.

153

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

159

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

162

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

165

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

169

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

176

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

183

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

186

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

189

190 “Concentrated Development Center”, an area composed of concentrated mixed  
191 use development established by a municipality or collection of municipalities in  
192 conjunction with the regional planning commission.

193 “Council”, the council for a sustainable commonwealth created under chapter  
194 132C.

195 “Regional planning commission”, regional or district planning commissions  
196 established under this chapter.

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

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

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

208 (b) (1) Each regional planning commission shall develop a regional sustainable  
209 development plan. This may include the revision or modification of a plan previously created  
210 under this chapter. Regional plans shall be revised or updated at least every 5 years. Regional  
211 plans shall contain the elements of a complete local sustainable development plan as provided  
212 in Chapter 41, Section 81D of the General Laws as amended by this Act. Each RPA shall adapt

213 said elements to the regional plan. Regional plans also shall adhere to the policies of the  
214 commonwealth established by section 2 of chapter 132C.

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

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

224 (2) In developing regional plans, the regional planning commissions shall each  
225 employ an open, inclusive and broadly participatory process. The regional planning  
226 commissions shall undertake public notification and participation procedures that are  
227 designed to seek widespread public participation in the regional planning process,  
228 including, but not limited to input from the following: local planning boards and other  
229 officials and residents of each municipality within the planning district; business and  
230 industry representatives; environmental and public health groups; housing advocates and  
231 providers, advocates for the local watershed area or areas; representatives of conservation  
232 commissions; officials and/or residents of a neighboring planning region with an interest,  
233 and representatives of the commonwealth's agencies and departments who have  
234 infrastructure or investments in the planning district.

235 (3) The executive committee of each regional planning commission shall review  
236 its regional plan for compliance with this section and internal consistency before  
237 forwarding it to its commission members for approval. If a regional plan is approved by  
238 a simple majority vote of the regional planning commission's members, the plan shall be  
239 considered approved and there shall be a rebuttable presumption that the plan is fully  
240 compliant with this section and internally consistent. Once the regional plan is approved  
241 by a majority vote of the commission members, the regional planning commission shall  
242 forward it to the council for sustainable commonwealth, created under chapter 132C, to  
243 enable the commonwealth's agencies to develop capital spending plans that are consistent  
244 with the regional plans.

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

248

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

253

254 (1) A fundamental element of the urban initiative program shall include identification  
255 and designation of Targeted Investment Areas, based on municipal recommendations.

256 Examples include: infill development in areas with infrastructure capacity; re-development of  
257 brownfield sites; and adaptive reuse of structures.

258

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

265

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

272

273 (g) Regional planning commissions shall be responsible for developing a process to  
274 review major developments affecting more than one community. Regional planning  
275 commissions will establish a definition for major developments and procedures for comment  
276 and review. The Planning Board of any municipality within a region can request that the  
277 regional planning commission hold a public hearing on a major development. Any comments or  
278 recommendations that result from the review will be shared with the Massachusetts

279 Environmental Policy Act (MEPA) office, if the project requires MEPA review, or with the  
280 appropriate decisionmaking and permitting authorities.

281

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

284

285 Section 81D

286

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

288

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

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

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

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

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

297 “Sustainable”, purposefully designed to bring about efficient, safe, healthy,  
298 economically vital communities that include a sufficient amount of affordable  
299 housing, while simultaneously maintaining and enhancing the environment, the



300 natural resource base and the ongoing functioning of natural ecosystems that are  
301 fundamental to sustaining life and prosperity for current as well as future generations.

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

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

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

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

320

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

326

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

331

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

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

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

346

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

350

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

355

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

359

360 (x) Implementation program element which defines and schedules the specific  
361 municipal actions, including the identification of the anticipated costs and revenues, associated  
362 with each element of the plan. Scheduled expansion or replacement of public facilities or  
363 circulation system components and the anticipated costs and revenues associated with

364 accomplishments of such activities shall be detailed in this element. This element shall specify  
365 the process by which the municipality's regulatory structure shall be amended so as to be  
366 consistent with the plan.

367

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

370

371 (4) In developing local plans, the municipalities shall each employ an open, inclusive and  
372 broadly participatory process. The municipalities shall undertake public notification and  
373 participation procedures that are designed to seek widespread public participation in the local  
374 planning process, including but not limited to input from the following: local officials and  
375 residents of the municipality, neighborhood representatives, business and industry  
376 representatives in the community, environmental and public health groups, housing advocates  
377 and providers, advocates for the local watershed area or areas; conservation commissions; the  
378 appropriate regional planning commission, representatives of neighboring municipalities and  
379 representatives of the commonwealth's agencies and departments that have infrastructure or  
380 investments in the municipality.

381

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

385

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

393

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

398

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

402

403 (c) A municipality shall present its completed plan to the applicable regional  
404 planning commission for review. The regional planning commission shall, within 60 days  
405 of receipt of the plan, prepare and submit to the municipality a written review of the plan  
406 that shall certify whether the plan satisfies all the goals and elements required by  
407 subsection (b), whether it is both internally consistent and consistent with the applicable

408 regional sustainable development plan, and whether it has given consideration to the local  
409 sustainable development plans of neighboring municipalities. The review shall identify  
410 any deficiency or omission with respect to each required element and goal described in  
411 subsection (b). The review shall include, where appropriate, recommendations as to how  
412 any omissions or deficiencies may be rectified. Upon receipt of the regional planning  
413 commission's certification indicating satisfactory compliance with this section, the  
414 planning board shall file the local plan with the office of the clerk of the municipality.

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

425

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

431

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

439

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

446

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

452

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



