

# HOUSE . . . . . No. 6072

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, April 26, 1982.

The committee on Bills in the Third Reading, to whom was referred the Bill relative to bonus zoning for solar siting (House, No. 3029, changed), reports recommending that the same be amended by the substitution of the accompanying bill (House, No. 6072) ought to pass.

For the committee,

ALFRED E. SAGGESE, Jr.

## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Eighty-Two.

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### AN ACT ALLOWING AN INCREASE IN DENSITY OF POPULATION OF ZONING AS A CONDITION OF CERTAIN SOLAR SITING.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 40A of the General Laws is hereby amended by striking  
2 out section 9, as most recently amended by section 5 of chapter 508  
3 of the acts of 1980, and inserting in place thereof the following  
4 section: —

5 *Section 9.* As used in this section, the following words shall,  
6 unless the context clearly requires otherwise, have the following  
7 meanings:

8 “Cluster development”, a residential development in which the  
9 buildings and accessory uses are clustered together into one or  
10 more groups separated from adjacent property and other groups  
11 within the development by intervening open land. A cluster devel-  
12 opment shall be permitted only on a plot of land of such minimum  
13 size as a zoning ordinance or by-law may specify which is divided  
14 into building lots with dimensional control, density and use restric-  
15 tions of such building lots varying from those otherwise permitted  
16 by the ordinance or by-law and open land. Such open land when  
17 added to the building lots shall be at least equal in area to the land  
18 area required by the ordinance or by-law for the total number of  
19 units or buildings contemplated in the development. Such open  
20 land shall either be conveyed to the city or town and accepted by it  
21 for park or open space use, or be conveyed to a non-profit organi-  
22 zation the principal purpose of which is the conservation of open  
23 space, or to be conveyed to a corporation or trust owned or to be  
24 owned by the owners of lots or residential units within the pilot. If  
25 such a corporation or trust is utilized, ownership thereof shall pass  
26 with conveyances of the lots or residential units. In any case where  
27 such land is not conveyed to the city or town, a restriction enforcea-  
28 ble by the city or town shall be recorded providing that such land

29 shall be kept in an open or natural state and not be built for  
30 residential use or developed for accessory uses such as parking  
31 or roadway.

32 "Planned unit development", a mixed use development on a plot  
33 of land containing a minimum of the lesser of sixty thousand  
34 square feet or five times the minimum lot size of the zoning district,  
35 but of such larger size as an ordinance or by-law may specify, in  
36 which a mixture of residential, open space, commercial, industrial  
37 or other uses and a variety of building types are determined to be  
38 sufficiently advantageous to render it appropriate to grant special  
39 permission to depart from the normal requirements of the district  
40 to the extent authorized by the ordinance or by-law.

41 "Solar siting", the laying out of buildings, roads, landscaping  
42 and open space so that the building itself and solar collectors,  
43 whether actually in place or planned for the future, can get maxi-  
44 mum direct sunlight to permit the use of solar energy for space  
45 heating, water heating and air conditioning.

46 Zoning ordinances or by-laws shall provide for specific types of  
47 uses which shall only be permitted in specified districts upon the  
48 issuance of a special permit. Special permits may be issued only for  
49 uses which are in harmony with the general purpose and intent of  
50 the ordinance or by-law, and shall be subject to general or specific  
51 provisions set forth therein; and such permits may also impose  
52 conditions, safeguards and limitations on time or use.

53 Zoning ordinances or by-laws may also provide for special  
54 permits authorizing increases in the permissible density of popula-  
55 tion or intensity of a particular use in a proposed development;  
56 provided that the petitioner or applicant shall, as a condition for  
57 the grant of said permit, provide certain open space, housing for  
58 persons of low or moderate income traffic or pedestrian improve-  
59 ments, solar siting, or other amenities. Such zoning ordinances or  
60 by-laws shall state the specific improvements or amenities or loca-  
61 tions of proposed uses for which the special permits shall be  
62 granted, and the maximum increases in density of population or  
63 intensity of use which may be authorized by such special permits.

64 Zoning ordinances or by-laws may provide that special permits  
65 may be granted for multi-family residential use in nonresidentially  
66 zoned areas where the public good would be served and after a  
67 finding by the special permit granting authority, that such nonresi-

68 dentially zoned area would not be adversely affected by such a  
69 residential use, and that permitted uses in such a zone are not  
70 noxious to a multi-family use.

71 Zoning ordinances or by-laws may also provide that cluster  
72 developments or planned unit developments shall be permitted  
73 upon the issuance of a special permit.

74 Zoning ordinances or by-laws shall provide that special permits  
75 shall only be issued following public hearings held within sixty-five  
76 days after filing of an application with the special permit granting  
77 authority, a copy of which shall forthwith be given to the city or  
78 town clerk by the applicant; and may provide that certain classes of  
79 special permits shall be issued by one special permit-granting  
80 authority and others by another special permit granting authority  
81 as provided in the ordinance or by-law. Such special permit grant-  
82 ing authority shall adopt and from time to time amend rules  
83 relative to the issuance of such permits, and shall file a copy of said  
84 rules in the office of the city or town clerk. Such rules shall  
85 prescribe a size, form, contents, style and number of copies of plans  
86 and specifications and the procedure for a submission and approv-  
87 al of such permits. Special permit granting authorities shall act  
88 within ninety days following a public hearing for which notice has  
89 been given by publication or posting as provided in section eleven,  
90 and by mailing to all parties in interest; provided, however, a city  
91 council having more than five members designated to act upon  
92 such a permit may appoint a committee of such council to hold the  
93 public hearing. Failure by a special permit granting authority to  
94 take final action upon an application for a special permit within  
95 said ninety days following the date of public hearing shall be  
96 deemed to be a grant of the permit applied for. Special permits  
97 issued by a special permit granting authority shall require a two-  
98 thirds vote of boards with more than five members, a vote of at  
99 least four members of a five member board and a unanimous vote  
100 of a three member board.

101 Zoning ordinances or by-laws shall provide that a special permit  
102 granted under this section shall lapse within a specified period of  
103 time, not more than two years, and including such time required to  
104 pursue or await the determination of an appeal referred to in  
105 section seventeen, from the grant thereof, if a substantial use  
106 thereof has not sooner commenced except for good cause or, in the

107 case of permit for construction, if construction has not begun by  
108 such date except for good cause.

109 Zoning ordinances or by-laws shall also provide that uses,  
110 whether or not on the same parcel as a matter of right, accessory to  
111 activities permitted as a matter of right, which activities are neces-  
112 sary in connection with scientific research or scientific develop-  
113 ment or related production, may be permitted upon the issuance of  
114 a special permit provided the granting authority finds that the  
115 proposed accessory use does not substantially derogate from the  
116 public good.

117 A hazardous waste facility as defined in section two of chapter  
118 twenty-one D shall be permitted to be constructed as of right on  
119 any locus presently zoned for industrial use pursuant to the ordi-  
120 nances and by-laws of any city or town provided that all permits  
121 and licenses required by law have been issued to the developer and  
122 a siting agreement has been established pursuant to sections twelve  
123 and thirteen of chapter twenty-one D; provided, however, that  
124 following the submission of a notice of intent, pursuant to section  
125 seven of chapter twenty-one D, a city or town may not adopt any  
126 zoning change which would exclude the facility from the locus  
127 specified in said notice of intent. This section shall not prevent any  
128 city or town from adopting a zoning change relative to the pro-  
129 posed locus for the facility following the final disapproval and  
130 exhaustion of appeals for permits and licenses required by law and  
131 by chapter twenty-one D.





