

June 22, 2017

Chairman Julian Cyr
Chairman Edward Coppinger
Joint Committee on Community Development and Small Business
State House, Room 26
Boston, MA 02133

Re: Opposition to S. 94

Dear Chairman Cyr, Chairman Coppinger and Members of the Committee:

We are writing as local and state leaders in public health and environmental protection in opposition to S.94, “An Act improving housing opportunities and the Massachusetts economy.” We acknowledge the great need for additional affordable housing in the Commonwealth and know that the lack of housing is hurting our residents and our economy. That said, we do not believe housing production and environmental and health protections are mutually exclusive. In fact, quality of life, including a healthy environment with parks, natural areas and recreational opportunities, is one of the Commonwealth’s strongest calling cards. We do not have to sacrifice resources and public health protections for housing if we align incentives and support communities to adequately plan for the future.

We oppose S.94 because it would seek to undo local environmental and health protections (Sections 16-18). The state standards for wetlands protection and on-site sewage disposal (Title 5) are meant to be the minimum standards for a community. State standards have a scientific basis, but they are also the product of a political process that tries to balance interests. We know that local conditions can vary greatly, whether it be soil conditions, proximity to other resources such as drinking water supply or shellfish beds, etc. To address these geographic variables, once the state standard was set, it was agreed that if more protective local laws were needed based on local conditions, municipalities had the authority to enact them.

It is worth noting, that there have been numerous reviews and updates to the wetlands law to keep up with new science and address other issues. Recently, the Mass. Department of Environmental Protection (DEP) has convened an advisory group to re-examine our Title 5 law as part of the regulatory review that the administration initiated upon coming into office. The development community is at the table, as are expert consultants and representatives of the environmental community in an effort to establish and maintain a constructive dialogue between and among all stakeholders. The first meeting took place on April 11th and there will be an additional series of meetings to review the law.

S. 94 would allow more protective local environmental and health ordinances to be overruled unless those local requirements are approved by DEP. The bill requires there be a DEP ruling before any community can adopt stricter standards, with evidentiary findings that there is scientific basis for stricter standards, the local rule is a recommended best practice, is necessary to protect “unusual local resources that warrant special or enhanced protection,” and does not conflict with state law or regulation.

As you know, DEP’s budget has been slashed during the past decade. It does not make sense to add this extra and unnecessary burden onto DEP especially in light of the above-mentioned advisory group. Almost 200 Massachusetts cities and towns have adopted municipal wetland ordinances and bylaws to regulate activities in or near wetlands. Many municipalities also have adopted on-site sewage disposal systems regulations that are more protective than those set forth in Title 5 of the State Environmental Code. It is unreasonable to ask DEP to review all of these local regulations. Furthermore, requiring each local regulation to meet all four tests included in this bill would be an extremely high bar that is likely to render any reasonable local requirements null and void. S. 94 would also allow appeals of decisions made under local law to DEP, even though DEP does not have the responsibility to implement that law.

With the state already experiencing impacts from climate change, these issues take on even more importance. We can expect more frequent and extreme flood events, more droughts, and more damaging storms along with rising sea levels. Protecting wetlands, which absorb carbon and stormwater, is critical.

Conservation Commissions and local Boards of Health are in the best position to determine the unique local conditions that may warrant more stringent local standards.

Thank you for your consideration. If we can be of any further assistance to you, please do not hesitate to contact Nancy Goodman at the Environmental League of Massachusetts (ngoodman@environmentalleague.org) or Cheryl Sbarra at the Massachusetts Association of Health Boards (sbarra@mahb.org).

Sincerely,

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