

**SENATE . . . . . No. 117**

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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 adoption of the accompanying bill:

An Act to promote livable communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>

**SENATE . . . . . No. 117**

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By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 117) of Marc R. Pacheco, Mary S. Keefe and Sal N. DiDomenico for legislation to promote livable communities. Community Development and Small Businesses.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 75 OF 2013-2014.]

The Commonwealth of Massachusetts

—————  
**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
—————

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  
9 general 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  
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  
41 by 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  
44 not enable, contribute to, or perpetuate development that is inconsistent with state, regional and  
45 local 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  
76 capital planning done by each state agency;

77 (2) resolve inconsistencies among and between each of the capital and operating plans  
78 of the agencies and regional sustainable development plans, and any inconsistencies that cannot  
79 be 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 2014  
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  
174 an 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  
200 and 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 41 of 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  
262 significant natural, cultural, and historic resource areas of the municipality and policies and  
263 strategies for the protection and management of such areas. This element shall also include any  
264 strategies for protecting community character.

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

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

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

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

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

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

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

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

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

303 and providers, advocates for the local watershed area or areas; conservation commissions; the  
304 appropriate regional planning commission, representatives of neighboring municipalities and  
305 representatives of the commonwealth's agencies and departments that have infrastructure or  
306 investments in the municipality.

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

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

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

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

323 (c) A municipality shall present its completed plan to the applicable regional planning  
324 commission for review. The regional planning commission shall, within 60 days of receipt of the

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

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

345 (e) Municipalities shall have five years to make substantial progress towards  
346 implementation of their plans. If after five years from the date of certification, the applicable  
347 regional planning commission deems that little or no progress has been made towards

348 implementation of the plan through changes in bylaws or ordinances, the plan will be decertified  
349 and the regional planning commission shall notify the council of the decertification.

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

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

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

368 (d) Provided further that chapters 236 and 246 of the acts and resolves of 2014 be  
369 amended to authorize and direct the secretary of environmental affairs and the secretary of

370 transportation to appropriate existing funds not to exceed \$35,000,000 for the purposes outlined  
371 in this act. Of this amount, \$5,500,000 will be for one time grants to be made to the regional  
372 planning commissions established under chapter 40B of the General Laws to facilitate  
373 compliance with section 5 of said chapter 40B as amended by this act, in accordance with the  
374 following formula: base funding of \$100,000 per year per regional planning commission, plus 70  
375 cents per capita based upon the most recent U.S. Census data on population.